

1

2



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Nov 22, 1967.

MD-50N

Card 1 of 3

1063



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Nov 22, 1967.

MD-50N

Card 2 of 3

14

15

16

17

HONORABLE H. VERNON ENEY,
PRESIDENT

18

19

20

Reported by:

C. J. Hunt

21

and

D. Fitzgerald

1
2
3

CONSTITUTIONAL CONVENTION



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Nov 22, 1967.

MD-50N

Card 3 of 3

11
12
13
14
15
16
17
18
19
20
21

CHAMBER OF THE HOUSE OF DELEGATES

State Capitol

Annapolis, Maryland

November 22, 1967 - 10:00 a.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
C. J. Hunt
and
D. Fitzgerald

1
2
3 CONSTITUTIONAL CONVENTION

4 OF THE

5 STATE OF MARYLAND
6
7

8 -----
9

10 Chamber of the House of Delegates

11 State Capitol

12 Annapolis, Maryland

13 November 22, 1967 - 10:00 a.m.
14

15 -----
16

17 HONORABLE H. VERNON ENEY,
18 PRESIDENT
19

20 Reported by:
21 C. J. Hunt
and
D. Fitzgerald

1 THE PRESIDENT: The Sergeant at Arms will clear
2 the aisles and close the doors.

3 The Convention will please come to order.

4 The invocation this morning will be offered by
5 the Reverend Carroll R. Gunkel of Trinity Methodist Church,
6 Catonsville. Reverend Gunkel.

7 REVEREND GUNKEL: Let us pray: Almighty and
8 most gracious God, the first thoughts which come into our
9 minds in the morning hour, the first words which come
10 forth from our lips are thoughts and words of thanksgiving
11 that Thou has brought us from the darkness of night to the
12 light of yet another day; and though that day is cloudy
13 and cold and foggy, we know that there is nothing upon this
14 earth which can hide Thy love from us; so enable us, O
15 Lord, as we come in this hour to be properly thankful for
16 Thy past blessings, and to look forward with continuing
17 hope for Thy mercy and Thy love to rest upon us. We in-
18 voke Thy blessing most heartily upon these delegates
19 assembled in this Convention. We pray Thy blessing and
20 Thy benediction upon each and every one of them as they
21 travel back and forth from their homes to this place of

1 work. Grant unto them every traveling mercy.

2 As they leave their families, may they know
3 that they leave their families in Thy care and keeping and
4 will return to their love.

5 We pray, O Lord, that as they come into this
6 time and this place that Thou wilt endow them with wisdom,
7 courage and strength. Thou does know, gracious Father,
8 that they have been prayed over a great deal, and yet help
9 us, O Lord, that we may realize that every prayer is
10 lifted to Thee for them because in them rests the well-being
11 of our State.

12 We are thankful for this democracy which brings
13 these delegates together and which brings us all to this
14 time and this place. Reach out Thy hand of blessing unto
15 the presiding officer and all of the leaders of this Con-
16 vention, and of our entire State and nation, that surely
17 the work which we do may bring about peace and understanding
18 and well-being in our State and unto the ends of the earth.

19 Help us, Father, that as the days grow long, and
20 our tempers grow short, that we may always be patient with
21 one another, always seeking to give love, no matter what

1 we may receive. Help us that when times come where wis-
2 dom grows thin and ideas seemingly disappear, that Thy
3 inspiration would rest upon each of these delegates, that
4 Thou will inspire them and lift them to great heights of
5 achievement. Bless those who are given unto us to lead,
6 that they may lead with wisdom and honor and glory, and
7 give unto us those who are to follow, courage, patience
8 and faithfulness.

9 These and all blessings we ask in Thy Name,
10 O God, and in the Name of Him whom Thou has sent, and Who
11 has taught us the words which we now pray:

12 Our Father, Who art in heaven, hallowed be Thy
13 Name, Thy kingdom come, Thy will be done, on earth as it
14 is in heaven. Give us this day our daily bread and forgive
15 us our trespasses as we forgive those who trespass against
16 us, and lead us not into temptation but deliver us from
17 evil, for Thine is the Kingdom, and the Power and the Glory
18 forever. Amen.

19 THE PRESIDENT: Thank you.

20 Roll call.

21 (Whereupon, the roll call was taken.)

1 THE PRESIDENT: The Clerk will record the roll
2 call.

3 The Chair recognizes Chairman Powers, Chairman
4 of the Committee on Calendar and Agenda.

5 DELEGATE POWERS: Mr. President, the Calendar
6 and Agenda today, I do not believe, reached all the desks;
7 but the format is exactly the same except it calls for
8 resuming consideration of the Committee recommendation in
9 which we have been involved in the last several days, and at
10 the conclusion of that, we begin consideration of Committee
11 Report No. EB-1.

12 If you will take me on faith, I move the adop-
13 tion of that Calendar.

14 THE PRESIDENT: Does that include the Debate
15 Schedule No. 5?

16 DELEGATE POWERS: Mr. President, the second
17 item under orders of the day involves Debate Schedule No.
18 5. I thought when I moved that we resolve ourselves into
19 the Committee of the Whole, it would include adoption of
20 that Debate Schedule.

21 THE PRESIDENT: Is there a second?

1 (Whereupon, the motion was seconded.)

2 THE PRESIDENT: All in favor, signify by saying
3 Aye; contrary, No. The Ayes have it. It is so ordered.

4 Are there any reports of committees?

5 (There was no response.)

6 Are there any resolutions?

7 (There was no response.)

8 Resolution No. 22. The Clerk will read the
9 resolution.

10 MR. QUILLEN: Resolution No. 22, by Delegate
11 Gallagher, A Resolution to provide for a system of self-
12 restraint in the presentation of amendments by members
13 of the Constitutional Convention, to fine members whose
14 amendments fail of passage and to dispose of these fines.

15 THE PRESIDENT: Resolution No. 22 is referred
16 to the Committee on Rules, Credentials and Convention
17 Budget.

18 Are there any other motions or resolutions?

19 (There was no response.)

20 Before resolving into the Committee of the Whole,
21 I have been requested by Delegate Hutchinson to say that

1 someone inadvertently picked up the wrong raincoat from
2 the Lounge yesterday. If you have a black raincoat, please
3 check and see if you have Delegate Hutchinson's instead of
4 your own.

5 The Chair recognizes Delegate Powers.

6 DELEGATE POWERS: Mr. President, I move the
7 Convention resolve itself into the Committee of the Whole
8 for the purpose of considering the general orders of today.

9 I also include in that motion the adoption of
10 Debate Schedule No. 5 which will cover the control and
11 limitation of debate with respect to the EB Report, Com-
12 mittee Report No. EB-1.

13 THE PRESIDENT: Is there a second?

14 (Whereupon, the motion was seconded.)

15 All in favor, signify by saying Aye; contrary,
16 No. The Ayes have it. It is so ordered.

17 (Whereupon, at 10:14 o'clock a.m., the Conven-
18 tion resolved itself into the Committee of the Whole.)

19 (The mace was removed by the Sergeant at Arms.)

20 THE CHAIRMAN: The Committee of the Whole will
21 please come to order.

1 Pursuant to the recess taken by the Committee
2 of the Whole yesterday, the first order of business this
3 morning is to afford Delegate Clark the opportunity to
4 offer his amendment, which he had offered and then with-
5 drawn.

6 I believe the amendment is already distributed.

7 For what purpose does Delegate Gallagher rise?

8 DELEGATE GALLAGHER: A parliamentary inquiry,
9 Mr. Chairman. May I suggest the absence of a quorum? I
10 don't think we have had a roll call.

11 THE CHAIRMAN: We have had a roll call.

12 DELEGATE GALLAGHER: I am sorry.

13 THE CHAIRMAN: We will take another one in view
14 of the fact the absence of a quorum is suggested; roll
15 call.

16 The Clerk will record the roll call.

17 A quorum being present, the Committee of the
18 Whole is in session.

19 You have on your desk the amendment which was
20 offered yesterday originally as Amendment 52, and then
21 upon request withdrawn by Delegate James Clark.

1 The amendment will be No. 52. The amendment
2 was modified yesterday. Make sure that you have the cor-
3 rected copy. The Chair will read it as modified: On
4 Page 4, Section 5.14, Nomination and Appointment, in
5 Line 45 after the word "vacancy", add this sentence:

6 "If no list or a list with less than the minimum
7 number of names is received by the governor within the
8 time specified herein, the governor may fill the vacancy
9 by appointing any eligible person."

10 The amendment was withdrawn yesterday in order
11 to give the Committee on the Judicial Branch an oppor-
12 tunity to consider it and advise the Committee of the
13 Whole with respect thereto. The Chair recognizes Delegate
14 Mudd.

15 DELEGATE MUDD: It is my understanding the
16 proponents desire to withdraw the amendment, Mr. Chairman.

17 THE CHAIRMAN: Delegate Clark.

18 DELEGATE CLARK: Mr. Chairman, in harmony with
19 the request of the Chairman of the Committee, the proponents
20 of this amendment agree to withdraw it.

21 THE CHAIRMAN: Amendment 52 is withdrawn.

1 We are now at the point under the Debate Schedule
2 where we are considering Sections 5.29 to 5.31. The Chair
3 recognizes Delegate Mudd to make a presentation of the
4 Committee recommendation on behalf of the Committee.

5 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
6 men of the Committee, may I first thank you for your kind
7 and long-suffering consideration of the matters so far con-
8 sidered, as per the Committee Recommendation JB-1.

9 I would like to assure you and hope that I can,
10 that the consideration required of the subject matter now
11 to be presented should not be as difficult or require as
12 much time.

13 The matter now to be presented to the Committee
14 is administration of the judicial system and the rule-
15 making power of the Court of Appeals.

16 This subject matter is covered by only two
17 sections of the Committee recommendation: Section 5.29 and
18 Section 5.31.

19 As the present Constitution provides, our
20 Committee recommendation provides that the Chief Judge of
21 the Court of Appeals shall be the administrative head of
~~the judicial system. The recommendation further provides~~

1 that the Chief Judge of the Court of Appeals shall appoint
2 a chief judge of each of the other three court tiers.

3 The Chief Judge of the Intermediate Court of Appeals, the
4 Superior Court and the Chief Judge of the District Court
5 should have such administrative duties incident to the
6 overall functioning of the Judiciary as assigned for that
7 purpose.

8 Our recommendation as further provided in Sec-
9 tion 29 allows for the appointment of other administrative
10 judges to be charged with such administrative responsibil-
11 ities as assigned them by the Chief Judge of the Court of
12 Appeals.

13 These administrative judges shall perform such
14 duties as prescribed by rule of the Court of Appeals,
15 such rules to be adopted pursuant to the rule-making power
16 of the court, as set out in the subsequent Section 5.31.

17 Likewise, the administration of the judicial
18 system obviously contemplates efficient use of the judicial
19 manpower so that the administration of the judicial system
20 allows for the assignment temporarily of any judge to any
21 court as prescribed by rule. This is a necessary integral

1 part of the administrative responsibility and duties of
2 the Chief Judge as the head of the judicial system.

3 With respect to Section 5.31, titled, Rule-
4 Making Power, may I first call your attention to the first
5 few words thereof, which say that, except as to matters
6 specifically provided by this Constitution to be prescribed
7 by rule, the Court of Appeals by rule and the General
8 Assembly^{by}/law shall have current power.

9 Now, our Committee recommendation as presented
10 to you contains many provisions to be governed exclusively
11 by rule. Some of those have been deleted by action of this
12 Committee, and the remaining matters in this area that
13 can be controlled exclusively by rule-making power of
14 the Court of Appeals are these:

15 Establishment of the number, qualifications and
16 duties of the Commissioners, and of the judges to appoint
17 them. Number two, establishment of provisions for lawyers'
18 poll; number three, establishment of rules, practice and
19 procedure of the whole Commission on Judicial Disabilities.

20 Next, establishment of manner of designating
21 administrative judges and their duties.

1 Next, provision for the assignment of judges,
2 and lastly, provision for appointment and terms of clerks of
3 the District Courts.

4 Therefore, you will please understand that the
5 Committee recommendation is that within those six areas the
6 power is exclusively within the Court of Appeals, to be
7 exercised by its rule-making authority. In all other
8 areas, namely, those of concurrent power, the power is con-
9 currently within the legislature and within the rule-
10 making power of the Court of Appeals. These are areas,
11 regulations governing and procedures in the courts; two,
12 governing admission of persons to practice law in this
13 State and the discipline of persons so admitted, and
14 third, governing administration of the courts, officers
15 of the Judicial Branch, and to the extent their duties
16 directly relate to the enforcement of judicial orders,
17 officers of the Executive Branch.

18 Accordingly, it is the recommendation of your
19 Committee on the Judicial Branch that as provided in Sec-
20 tion 5.31, the Court of Appeals shall have exclusive auth-
21 ority with respect to the six matters previously detailed,

1 but with respect to all other matters in the categories
2 just mentioned, the power shall be concurrent with the
3 legislature.

4 As indicated in our supporting memorandum, this
5 concurrent power is not novel and is in fact a continuation
6 of the existing situation.

7 The testimony before our Committee indicated
8 that there has been no problem about the concurrent authority
9 of the legislature and the Court of Appeals in the exercise
10 of its rule-making power. There has for many years been
11 a continuing 16-man Rules Committee. That committee has
12 worked harmoniously and cooperatively with the legislative
13 leaders in concurrently providing for matters of substance
14 and matters of practice and procedure, where there is need
15 concurrently for improvement in this area.

16 Accordingly, we suggest that what is proposed
17 by our Committee recommendation in these two sections,
18 5.29 for administration, and 5.31 under the rule-making
19 power is nothing more than is required for the proper
20 administration of the four-tier court system as exclusively
21 a State function, and we respectfully suggest that the

1 administrative responsibilities which now devolve first
2 upon the Chief Judge of the Court of Appeals and the Chief
3 Judges of the other three courts, and such other adminis-
4 trative judges as may from time to time be required, will
5 be a much greater responsibility than heretofore, and
6 these administrative powers, plus the rule-making power of
7 the Court of Appeals, be exercised in most areas concurrent
8 with the legislature is a necessary part of our Report
9 and essential to the efficient functioning of the four-tier
10 system with the manpower to be provided under the selection
11 and tenure provisions which so far have been approved.

12 I feel that this is a readily understood area
13 of the subject matter covered by our recommendation, but
14 I will be happy to try and answer any questions you may
15 have in this area and would like the opportunity to yield
16 to Judge Henderson, a member of our Committee, who has
17 had extensive experience on the Bench, was a member of the
18 Court of Appeals and who by virtue of current membership on
19 the Committee on Rules is perhaps more conversant than any
20 delegate in this Convention with the need and accomplish-
21 ment that has been made in that area.

1 I will answer any questions, Mr. Chairman.

2 (At this point, the Honorable James Clark,
3 First Vice-President, assumed the Chair.)

4 DELEGATE CLARK: The Chair recognizes Delegate
5 Stern.

6 DELEGATE STERN: Chairman Mudd, would you please
7 go over those six exclusive rule powers again, please?

8 DELEGATE MUDD: Those six categories in which
9 the power is exclusively left with the rule-making power
10 of the Court of Appeals are these: Number one, establish-
11 ment of the number, qualifications and duties of the Com-
12 missioners, the Commissioners being the assistants to the
13 District Court judges; number two, establishment of
14 provisions for lawyers' poll, a matter discussed at some
15 length yesterday; third, establishment of rules for prac-
16 tice and procedure before the Commission on Judicial Dis-
17 abilities; number four, establishment of the manner of desig-
18 nating administrative judges and their duties; five, pro-
19 visions for assignment of judges; and finally, provision
20 for appointment and terms of clerks of the District Courts.
21 That is the four-tier courts.

1 DELEGATE CLARK: The Chair recognizes Delegate
2 Blair.

3 DELEGATE BLAIR: Mr. Chairman, in connection
4 with your Section 5.29, Administration of Judicial System,
5 is it true that each of the Chief Judges of the lower
6 three tiers will serve at the pleasure of the judge of the
7 Appellate Court of Appeals?

8 DELEGATE MUDD: Yes, sir.

9 DELEGATE BLAIR: My question to you, does this
10 not make for politics in the Judiciary? Is it not possible,
11 then, for the Chief Judge if he were to die and were to be
12 superseded by another, to then bump out of the chief
13 judgeship all those in the under echelons?

14 DELEGATE MUDD: That is possible, but we think
15 a necessary provision, since the full responsibility of
16 administering the court system is delegated to the Chief
17 Judge of the Court of Appeals, and to properly and efficient-
18 ly perform that function, we think it is necessary that his
19 assistants at the other three-tier level shall serve at his
20 pleasure.

21 DELEGATE BLAIR: But you will admit that it does

1 make for politics in the Judiciary, does it not?

2 DELEGATE MUDD: I don't consider politics an
3 ugly word. It does allow for the appointment by the Chief
4 Judge of a man he thinks can best do the job.

5 DELEGATE BLAIR: So that he could then eliminate
6 anyone who had served for any period of time in the lower
7 three tiers as Chief Judge, and you would have an entirely
8 new transition of chief judgeships in the lower three tiers
9 of the system?

10 DELEGATE MUDD: That is correct.

11 DELEGATE CLARK: Are there any further questions
12 of Delegate Mudd?

13 The Chair recognizes Delegate Willoner.

14 DELEGATE WILLONER: Delegate Mudd, other than
15 the exclusive rule-making power under Section 5.31, and in
16 light of the fact that you have used completely different
17 language in Article IV, Section 18, do you intend any
18 change other than the exclusive rule-making power than is
19 existing in our present system?

20 DELEGATE MUDD: No. We consider Section 5.31
21 is consistent with the operation under the present

1 Constitution, especially in the concurrent area.

2 DELEGATE WILLONER: And it is meant to confer no
3 more or no less powers than presently exist?

4 DELEGATE MUDD: That is correct, except in the
5 six areas I have detailed for Delegate Linton.

6 DELEGATE CLARK: The Chair recognizes Delegate
7 Maurer.

8 DELEGATE MAURER: I have a question on Section
9 5.31. Did your Committee, for example, consider whether
10 the legislature could if it wished establish sort of a
11 merit system for employees of the courts, such as secre-
12 taries, similar to the kind of thing the legislature can
13 enact and has enacted for the Executive Branch?

14 DELEGATE MUDD: I think that would be possible
15 under the concurrent jurisdiction in that area of the
16 legislature to legislate and of course, to exercise its
17 rule-making power. That would be a possible result.

18 DELEGATE MAURER: Then the courts could by rule-
19 making power in effect veto it?

20 DELEGATE MUDD: Not necessarily. If it was a
21 matter of substance and not practice and procedure, it

1 would be more appropriately legislated than rule-making.
2 I would say to accomplish what you have required would
3 require two things: Legislation and rules -- if it were
4 a matter of substance, it would involve matters of procedure.

5 DELEGATE MAURER: Thank you.

6 (At this point, the Honorable H. Vernon Eney,
7 Chairman of the Committee of the Whole, again resumed
8 the Chair.)

9 THE CHAIRMAN: Are there further questions of
10 the Committee Chairman? Delegate Chabot.

11 DELEGATE CHABOT: Section 5.30. I see the
12 Minority Report would prefer to have the Chief Judges of
13 the three lower levels appointed by the governor.

14 Did the Committee give any consideration to
15 having the entire Court of Appeals make the decision with
16 regard to the Chief Judges at the other levels rather than
17 the Chief Judge of the Court of Appeals alone?

18 DELEGATE MUDD: I do not recollect that that
19 was considered. We felt, as best I can recollect, that
20 consistent with the provisions of the present Constitution
21 to make the Chief Judge of the Court of Appeals responsible

1 for the functioning of the court, it could best be accom-
2 plished by him designating his subordinates or his
3 associates in the other three tiers. The Minority Report
4 does propose that all four Chief Judges be appointed by
5 the governor, I believe.

6 THE CHAIRMAN: Any further questions of the
7 Committee Chairman?

8 If not, the Chair calls on Delegate Johnson
9 to present the Minority Report and would ask him to come
10 forward to the reading desk.

11 While Delegate Johnson is coming forward, the
12 Chair would like to take the opportunity to recognize the
13 presence in the gallery of ten boys from the Boys' Village
14 of Maryland, here with their teachers, Mr. Johnson and Mr.
15 Marshall. Delighted to have them with us. (Applause.)

16 Delegate Johnson.

17 DELEGATE JOHNSON: Mr. Chairman, fellow dele-
18 gates, administration of a unified court system is extremely
19 important, but not at the expense of creating a dynasty.

20 The Majority would have you believe that unless
21 we provide for the exclusive judicial operation of all the

1 functions of the court, the entire system will break down
2 in chaos. That will be the result. I feel I know a little
3 something about the general problems of administering a
4 judicial system. Therefore, I can fully appreciate the
5 concern of judges in our system when they have urged, as
6 many have, that we, members of this Convention, would be
7 making a serious mistake and placing too much power and too
8 much administrative detail in the Judiciary, or in the
9 Chief Judge of the judicial system.

10 Benjamin Franklin at the United States Consti-
11 tutional Convention spoke of his concern in a similar
12 matter when he argued against appropriations that would
13 have provided for an appointed president for life. Perhaps
14 he had Washington in mind when he said that his concern
15 was not for the first man appointed to the position, but
16 the uncertainty of the others who may come thereafter.

17 Fellow delegates, if we could be guaranteed the
18 services of the highly distinguished Hall Hammond, Chief
19 Judge of the Court of Appeals today, if we could be guaran-
20 teed his services forever, or someone identical to him,
21 these matters would not concern the Minority. Interestingly

1 enough, Chief Judge Hall Hammond commented unfavorably
2 on a section of the Commission Draft calling for the power
3 of the Chief Judge to move judges up and down the ladder
4 in the judicial system, and he cautioned members of our
5 Committee that this would simply be too much power to
6 place in any one man.

7 The Committee accordingly amended the section
8 slightly.

9 The rule-making power of the courts has been
10 adequately handled by the Committee of the Whole to date.
11 However, I urge your further study of similar matters which
12 you may or may not find to be substantive issues in nature.

13 The administration problem with respect to the
14 court boils down to the two main sections, Sections 5.29
15 and 5.30. Chairman Mudd has already commented briefly on
16 Sections 5.29 and 5.30. I would like to take this time
17 equally briefly to giving the Minority view.

18 You have perhaps noted that Section 5.29 in the
19 Majority Report calls upon the Chief Judge of the Court of
20 Appeals to designate Chief Judges of the Intermediate Appel-
21 late Court, Superior Court and the District Court. In the

1 view of the Minority, there is absolutely no need, and in
2 fact an inherent danger, to concentrate this measure of
3 power in the hands of any one man.

4 I call to your attention that under Section 5.04
5 of the Majority Report, agreed upon by Minority members of
6 the Committee, the governor appoints the Chief Judge of
7 the Court of Appeals. There is no rationale, I submit,
8 for the appointed Chief Judge of the Court of Appeals to
9 in turn appoint other chief judges in the judicial system
10 who have absolutely no term, but merely serve at the
11 measure of the original appointed Chief Judge of the Court
12 of Appeals.

13 I ask you to consider whether or not under a sys-
14 tem of this nature, as proposed by the Majority, there
15 would be or could be a fair, free and open exchange and
16 discussion concerning matters important to the judicial
17 system.

18 I ask you to consider what would happen upon the
19 retirement of the Chief Judge of the Court of Appeals.
20 Would not the newly appointed Chief Judge to the Court of
21 Appeals give serious consideration to, or perhaps give

1 serious consideration to cleaning house and appointing all
2 new chief judges on the Intermediate Court, Appellate
3 Court and District Court level. He may not do that, but
4 the possibility exists.

5 I submit that the proposition advanced by the
6 Minority is the answer to this difficult problem, for it
7 provides that the other chief judges of the other courts
8 would have the same right and term as the Chief Judge of
9 the Court of Appeals, namely, the other designated chief
10 judges by the governor, which serve until they either resign
11 the position of chief judge or until they retire.

12 The Chief Judge of the Court of Appeals would,
13 under our proposal, remain the administrative head of the
14 judicial court system; so he would have direct control,
15 direct supervisory control over all of the other judges,
16 and we strongly urge this Committee to adopt our amendment
17 pertaining thereto.

18 Under Section 5.30, the only difference that
19 you will find in the Minority Report with respect to this
20 section goes to the manner of appointing clerks on the
21 District Court level.

1 While we strongly support the Majority's
2 position that the clerks on the Superior Court level should
3 be selected in a manner prescribed by law, we think that
4 it is absurd not to provide in a similar manner that the
5 clerks of the District Court be at least appointed, not
6 selected, under our proposal, like the Majority. They
7 could not be elected to office, but we submit that they
8 should be appointed in a manner prescribed by law and that
9 the Judiciary should not have to concern itself with hiring
10 and perhaps even firing District Court clerks.

11 Our reasons are essentially those that we for-
12 merly gave in our proposition with respect to the Commission.

13 DELEGATE HENDERSON: Mr. Chairman.

14 THE CHAIRMAN: Delegate Henderson.

15 DELEGATE HENDERSON: A point of order or a point
16 of inquiry. Delegate Johnson is now discussing Section
17 5.30. I thought that was reserved for later and that we
18 presently had under discussion .29 and .31.

19 THE CHAIRMAN: He is presenting the entire
20 portion embraced within Sections 5.29, 5.30 and 5.31. We
21 will then take up each section seriatim.

1 DELEGATE HENDERSON: Thank you.

2 THE CHAIRMAN: Proceed, Delegate Johnson.

3 DELEGATE JOHNSON: Thank you, Mr. Chairman.

4 So under our amendment we would hope to remove
5 the Judiciary from this awkward and awesome responsibility
6 of having to appoint clerks of court in every county
7 throughout the State. We submit that there is a real dif-
8 ference between commissions and clerks of court.

9 We fully anticipate the possibility that the
10 legislature may turn right around and give the power of
11 appointing clerks of court to the judges, and if this be
12 the ways, so be it; but at least if we provide thusly by
13 law, the situation could be changed without the need of a
14 constitutional amendment.

15 In some of our opening remarks the other day,
16 I mentioned that Maryland was only one of twenty-seven
17 States that provided for appointment of clerks on the
18 Court of Appeals level. This is a good procedure, and we
19 endorse it and sincerely hope that it will not be changed
20 and feel certain that it will not be, but by the same
21 token, all the rest of the States do not even permit the

1 Judiciary to appoint clerks on that level; and none of the
2 States, absolutely none of the States permit the Judiciary
3 to appoint clerks of court on the lower levels; so we sub-
4 mit that our position on matters pertaining thereto is in
5 the mainstream, and we would like to see Maryland remain
6 in the mainstream in matters of this nature.

7 Under Section 5.31, the Committee of the Whole,
8 for all practical purposes, has taken care of the concern
9 of the Minority. Rather than submitting an individual
10 Minority Report on each section where the words "by rule"
11 were used, we hoped and perhaps we did flag the power that
12 was placed in the Court of Appeals by rule; and this Com-
13 mittee has properly in our opinion amended certain
14 sections so that unless I hear otherwise from the other
15 members of the Minority, we will not provide to exclude
16 some of the exclusive rule-making power that is now left
17 in the Court of Appeals under Section 5.31.

18 I will be happy to answer any questions.

19 THE CHAIRMAN: Are there any questions of the
20 Minority Spokesman? Delegate Rybczynski.

21 DELEGATE RYBCZYNSKI: Delegate Johnson, can we

1 start voting on these problems, tell us, either by listing
2 the matters now or eventually, just how many administrative
3 appointive duties are being assigned to the Chief Judge
4 by virtue of this entire Article?

5 DELEGATE JOHNSON: Well, it is a little diffi-
6 cult to characterize each and every one at this particular
7 point, Delegate Rybczynski, because some of the matters
8 have been amended, both in Committee and by the Committee
9 of the Whole to provide that some of these quasi-procedural
10 matters will now be handled by law and others by rule,
11 rather than directly by the Chief Judge, but I can say
12 that under Section 5.29, of course, he would appoint all
13 the other chief judges, even though the Section 5.29 pre-
14 scribes that he may assign judges, or that the assignment of
15 judges in the other courts shall be by rule; nevertheless
16 the Chief Judge will perform the designation of assigning
17 the other judges.

18 THE CHAIRMAN: Are there any other questions?

19 DELEGATE JOHNSON: And of course under the judicial
20 system, as previously enacted, we provide that Commissioners
21 shall be appointed as prescribed by rule.

1 I am sorry I can't detail more at this time.

2 THE CHAIRMAN: Are there any other questions
3 of the Minority Spokesman?

4 (There was no response.)

5 If not, Delegate Johnson can return to his seat,
6 and we will proceed to consider Sections seriatim.

7 Delegate Johnson, do you desire to offer your
8 Amendment M?

9 DELEGATE JOHNSON: Yes, Mr. Chairman.

10 THE CHAIRMAN: The pages will distribute
11 Amendment M.

12 Delegate Penniman.

13 DELEGATE PENNIMAN: Mr. Chairman, a matter of
14 personal privilege.

15 THE CHAIRMAN: State the privilege.

16 DELEGATE PENNIMAN: I would like this body to
17 welcome here this morning two very charming and intelligent
18 students with whom I had the opportunity to drive over
19 from Silver Spring this morning. One is Debbie Koss,
20 daughter of Delegate Koss, and the other is David Miller,
21 son of Delegate Betty Miller.

1 THE CHAIRMAN: Delighted to have them with us.
2 Delegate Gallagher, did you desire to be
3 recognized?

4 (There was no response.)

5 THE CHAIRMAN: The amendment now being dis-
6 tributed will be marked Amendment 53. The Clerk will read
7 the amendment.

8 MR. QUILLEN: Amendment 53 to accompany
9 Minority Report JB-1 to Committee Recommendation No. JB-1,
10 by Delegates Johnson, Harkness, Hickman, Kahl, Murphy,
11 Siweierski, Rush: On Page 9 in Section 5.29 Administration
12 of Judicial System strike out all of Lines 21 through 36,
13 inclusive, and insert in lieu thereof the following:

14 "The Chief Judge of the Court of Appeals shall
15 be the administrative head of the judicial system. The
16 Governor shall designate one Intermediate Appellate Court
17 Judge, one Superior Court Judge, and one District Court
18 Judge as the chief judges of their respective courts to
19 perform such duties in connection with the administration
20 of the judicial system as are assigned them by the Chief
21 Judge of the Court of Appeals. Each shall serve for the

1 remainder of his service on the Court, or until he resigns
2 the office of Chief Judge. Administrative judges may be
3 designated by the Chief Judge of the Court of Appeals as
4 prescribed by rule. The Court of Appeals shall provide
5 by rule for the assignment of any judge to sit temporarily
6 in any court."

7 THE CHAIRMAN: The amendment having been seconded,
8 the Chair recognizes Delegate Johnson. Under the Debate
9 Schedule, there is ten minutes of controlled debate allo-
10 cated to Delegate Johnson, and ten minutes to Delegate
11 Mudd, ten minutes of limited but uncontrolled debate.
12 Delegate Johnson.

13 DELEGATE JOHNSON: Mr. Chairman and fellow
14 delegates: As indicated by my opening remarks, and com-
15 plementing, I hope, what has been the actions of the Com-
16 mittee of the Whole with respect to curtailing some un-
17 fortunate extension of judicial power, I feel that the
18 matter now before you is essentially one of logic and
19 practicality.

20 If it makes any sense to have the governor
21 designate a chief judge of the Court of Appeals of Maryland

1 and to give a judge a term so that he will be chief judge
2 as long as he remains on the Court of Appeals, or until he
3 resigns the position, and then have that appointed chief
4 judge appoint other chief judges who serve at his pleasure,
5 if that makes sense to you, then you will, of course, vote
6 against our amendment.

7 But if you believe as we that a system will
8 work, and work better if the appointing governor will also
9 designate the Chief Judge of the Appellate Court, Superior
10 Court and the District Court, and that they will also have
11 a term similar to the chief judge, and that this is the
12 democratic and proper way of doing something, then you will
13 vote for our amendment.

14 Our amendment does not in any way affect the
15 power of the Chief Judge of the Court of Appeals to be and
16 remain the administrative head of the entire judicial court
17 system.

18 Our amendment does not change in any way the
19 fact that the chief judge may designate other administra-
20 tive judges, but the matter of chief judge, we submit, is
21 different, and we submit his importance, and I urge you

1 to adopt this amendment.

2 THE CHAIRMAN: The Chair recognizes Delegate Mudd.

3 DELEGATE MUDD: Mr. Chairman, may I yield three
4 minutes to Delegate Henderson, please?

5 THE CHAIRMAN: Delegate Henderson.

6 DELEGATE HENDERSON: Mr. Chairman, fellow dele-
7 gates, I think the position of the Minority is based to
8 some extent, perhaps, on a misconception of just what this
9 section is intended to do.

10 We are talking now about the chief judge appoint-
11 ing the three keymen in a Statewide judicial system. We
12 are not talking now about the County levels. We are talk-
13 ing about designating, naming chief judges who will be in
14 effect his administrative assistants.

15 Now, the purpose of giving the title of Chief
16 Judge to these people that he selects, he selects them from
17 among the judges who are already in office, so that the
18 purpose is that he would be sure, he wants to assure him-
19 self, that the person who is selected as he selects or names,
20 designates as the Chief Judge, shall be a person who possesses
21 administrative ability.

1 It is not every judge who possesses that kind of
2 talent. We are extremely fortunate here in Maryland that
3 our present Chief Judge is a great administrator and he
4 has a great administrator in the person of Fred Invernizzi
5 to assist him.

6 That is a very healthy thing, but on the Rules
7 Committee we had some research done on what a chief judge
8 really is.

9 We found a good many authorities throughout
10 the country which hold that a chief judge is merely a pre-
11 siding judge. He is not necessarily an administrator.

12 To go one step further back, this section really
13 does not change anything under the present setup. The
14 Court of Appeals only six months ago passed a rule which
15 gave in effect the authority to the Chief Judge of the Court
16 of Appeals to name as an administrative judge in each county
17 one other than the existing chief judge.

18 I believe he has exercised that only in two
19 cases. In both of those cases the chief judge requested
20 that he name someone other than himself as the administra-
21 tive judge.

1 THE CHAIRMAN: You have one-half minute, Dele-
2 gate Henderson.

3 DELEGATE HENDERSON: The report of the Commission
4 in the draft of the Constitution contains some significant
5 reasons why they thought it was necessary that he possess
6 the power to name the chief judge, because it was felt that
7 by giving him the title of chief judge this administrative
8 judge would have more authority, and the other judges
9 might listen to him on account of his office.

10 For that reason I strongly urge that we adopt
11 this provision.

12 THE CHAIRMAN: Delegate Johnson, you have eight
13 minutes you can allocate.

14 DELEGATE JOHNSON: Mr. Chairman, I would just
15 reserve about three minutes for the close, if you don't
16 mind.

17 THE CHAIRMAN: Delegate Mudd.

18 DELEGATE MUDD: Mr. Chairman, I would like to
19 yield three minutes to Delegate Marvin Smith.

20 THE CHAIRMAN: Delegate Marvin Smith.

21 DELEGATE M. SMITH: Mr. Chairman, I agree with

1 Judge Henderson. I am afraid there is a little bit of
2 misapprehension about just what a chief judge is and what
3 he does. Really, I think some of our brethern would have
4 us believe that he was some superpowerful individual.

5 Now, the first three years of my practice, and
6 I guess the last ten, have been before a judge who was
7 Chief Judge of the Circuit, and I haven't seen in that
8 capacity that he had any more power than he had previously.
9 The difference has been that a process was issued in his
10 name, and if somebody were disqualified, why he was the
11 one who made the assignment.

12 We have a concept here of a change in our
13 judicial system. We know that this judicial system operates
14 more efficiently in some areas of the State than it has in
15 some others. We believe that it could operate more efficient-
16 ly. We believe it would be the duty of these chief judges
17 to act insofar as the administration of that system is con-
18 cerned, to see that it does operate efficiently. They would
19 be the equivalent in some respects of the Fred Invernizzi
20 who is head of the administrative office of the courts at the
21 present time.

1 Now, I submit to you, Mr. Chairman, that to
2 charge a chief judge of the Court of Appeals with the
3 overall responsibility for the administration of the judi-
4 cial system of Maryland, and then to tie his hands by saying
5 to him, Mr. Chief Judge, you are responsible for the adminis-
6 tration of this system, but you may have nothing to say
7 with reference to the right arms to assist you in adminis-
8 tration, is a ridiculous premise.

9 THE CHAIRMAN: Delegate Mudd.

10 DELEGATE MUDD: May I yield three minutes to
11 Delegate Rosenstock, Mr. Chairman?

12 THE CHAIRMAN: Delegate Rosenstock.

13 DELEGATE ROSENSTOCK: Mr. Chairman, fellow dele-
14 gates, we have created here an unified system of courts on a
15 four-tier level. The purpose of Section 5.29 is to permit
16 the Chief Judge in the Court of Appeals the powers presently
17 given him under the present Constitution.

18 In addition, we are spelling out how he may make
19 that system work effectively, namely, by naming the chief
20 judges of the three other tiers of courts.

21 By so doing, he will have under him a responsible

1 judge and person with administrative abilities who will see
2 that the various judges in the several tiers work in the
3 rendering of justice to the people of Maryland.

4 We all know that while most of our judges are very
5 dedicated, once in a while we find some who just can't get
6 up the energy to stay on the Bench for much more than nine
7 months out of the year, and then continues the vacations.

8 Under this system we feel that the chief judge
9 will be able to work out vacation schedules, and they must
10 be kept, and who will police this? The chief judge of the
11 respective tier of courts.

12 There has been a good deal of wasted judicial
13 power in this State under the past administration of the
14 courts, and we envisage that this power given to the chief
15 judge, and you will notice that in the Committee's draft
16 there have been limitations on the absolute power, because
17 many of the duties are prescribed by rule, which means the
18 consensus of opinion between the chief judge and his other
19 associates on the Court of Appeals.

20 THE CHAIRMAN: Delegate Johnson.

21 DELEGATE JOHNSON: Mr. Chairman, and fellow

1 delegates, perhaps we have, those of us on the Minority,
2 have a little more confidence in our judges on all levels
3 than those of the Majority.

4 If the Majority's premise is correct, namely,
5 that the Chief Judge of the Court of Appeals has to have
6 "his men", unquote, to run a unified judicial system, and
7 I submit that isn't saying very much for any chief judge
8 of the Court of Appeals, and if that premise is correct,
9 does that not also mean that after the Chief Judge of the
10 Court of Appeals retires, and a new chief judge is desig-
11 nated by the governor, doesn't that mean that he will then
12 have to dismiss all of the other chief judges, those on the
13 other three tiers so that he can appoint his own "men" in
14 order to run a proper unified judicial system?

15 It makes absolutely no sense whatsoever.

16 Under our proposal there would be tenure on all
17 levels by the chief judges, the same as on the Court of
18 Appeals; and if you want to create a situation that will
19 cause chaos and embarrassment in the judicial system, then
20 go along with the Majority and permit a chief judge desig-
21 nated by the governor to appoint anyone, including getting

1 rid of appointments that have previously been designated
2 by the former chief judge.

3 Mr. Chairman, I notice that probably due to a
4 typographical error a sentence was deleted from our amend-
5 ment. I don't think that it is particularly material, but
6 inasmuch as we attempted to adopt everything in the Majority
7 except that which pertained to the appointment of the chief
8 judges, I wonder if we could move that a sentence that is in
9 the Majority but not in our Minority be included?

10 THE CHAIRMAN: What is the sentence?

11 DELEGATE JOHNSON: The sentence in the Majority,
12 Mr. Chairman, on Page 9, at Line 33, is "Administrative
13 judges shall perform the duties prescribed by rule" and
14 that --

15 THE CHAIRMAN: That is the sentence that appears
16 in the Committee Recommendation on Page 9, Lines 33 and 34?

17 DELEGATE JOHNSON: Yes, Mr. Chairman.

18 THE CHAIRMAN: Where would you put it?

19 DELEGATE JOHNSON: I would put it on Line 21
20 of the amendment, after the word "rule".

21 THE CHAIRMAN: Is there any objection to consider-

1 ing the amendment modified to insert in Line 21 after the
2 word "rule" a sentence reading, "Administrative judges shall
3 perform the duties prescribed by rule"?

4 In the absence of objection, the Chair will con-
5 sider the amendment as having been so modified.

6 You may proceed, Delegate Johnson.

7 DELEGATE JOHNSON: Thank you, Mr. Chairman. That
8 is all.

9 THE CHAIRMAN: Delegate Mudd, you have a little
10 more than one minute.

11 For what purpose does Delegate Armor rise?

12 DELEGATE ARMOR: I wonder if Delegate Johnson
13 would yield for a question?

14 THE CHAIRMAN: Delegate Johnson, do you yield
15 to a question?

16 DELEGATE JOHNSON: Delegate Armor, state the
17 question.

18 DELEGATE ARMOR: I am reading from your amend-
19 ment, Line 16: "Each shall serve the remainder of his
20 service on the court", referring to a chief judge of one
21 of the tiers who has been appointed by the governor.

1 Now, suppose the governor pulls a boo-boo, and
2 this man can't quite do the job. How would he get him out?

3 THE CHAIRMAN: Delegate Johnson.

4 DELEGATE JOHNSON: I would say that he would have
5 the same responsibility in getting rid of an unqualified
6 chief judge, the same way that we would by virtue of the
7 appointed Chief Judge of the Court of Appeals, if in fact
8 he has performed some misconduct, he can be removed under
9 the removal system; but I submit that he couldn't nor
10 shouldn't be removed for any other reason than you could
11 remove the Chief Judge of the Court of Appeals. Under the
12 Majority proposal the Chief Judge of the Court of Appeals
13 could not be removed either.

14 THE CHAIRMAN: Delegate Mudd, you have little
15 more than a minute.

16 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
17 men of the Committee, I think the last question proposed
18 to the Spokesman for the Minority pointed up the basic
19 weakness in the Minority position in this regard, and I
20 can offer nothing more than the reason that the other
21 speakers in opposition to this amendment have advanced; and/

1 is, that if you are going to give the Chief Judge of the
2 Court of Appeals a job to do, namely, the efficient adminis-
3 tration of this court system that we now have adopted
4 for the State, then why run the risk of possibly curtailing
5 or sabotaging within the operation by giving to the governor
6 the power to name his assistants, who might not share his
7 views in the administration of the court system?

8 I think it is essential to the effective oper-
9 ation of this system that the man who has the responsibility,
10 namely, the Chief Judge of the Court of Appeals have the
11 power to appoint those assistants who will assist him in
12 his administration and not run the risk of appointees who
13 may be unsympathetic with those procedures that he feels so
14 essential to the efficient administration of justice in
15 this State. I therefore urge you to vote against this
16 amendment.

17 THE CHAIRMAN: Any other delegate desire to speak
18 in favor of the amendment? Delegate Cardin.

19 DELEGATE CARDIN: Mr. Chairman, I would like to
20 ask a question of Delegate Mudd if I may.

21 THE CHAIRMAN: Delegate Mudd, do you yield to a

1 question?

2 DELEGATE MUDD: Yes, Mr. Chairman.

3 THE CHAIRMAN: Delegate Cardin.

4 DELEGATE CARDIN: Delegate Mudd, can you tell
5 us in what other State this system is used and what exper-
6 ience has been gathered from that?

7 THE CHAIRMAN: Delegate Mudd.

8 DELEGATE MUDD: I do not have the figures in
9 front of me on that. Just a minute. May I check?

10 I am informed we have no figures on that. It
11 the is/basic concept of our recommendation that whoever has the
12 responsibility must have the power to obtain those assis-
13 tants who will be most helpful in the function to be served.

14 THE CHAIRMAN: Delegate Cardin.

15 DELEGATE CARDIN: May I also ask if you can ex-
16 plain to me what the Federal system is in appointing the
17 chief judges in the various tiers, or how they arrive at
18 their position?

19 THE CHAIRMAN: Delegate Mudd.

20 DELEGATE MUDD: I do not know how that is accom-
21 plished.

1 THE CHAIRMAN: The Chair can answer that; that
2 the Circuit Court of Appeals level and the District Court
3 level, there is no chief judge appointed. The senior judge
4 becomes acting chief judge. Delegate Cardin.

5 DELEGATE CARDIN: I am only trying to relate
6 this to some other area. I would like to know actually
7 whether we are innovating/in Maryland, or whether we are
8 borrowing on some other experience. This is my problem.
9 Is there any court in which this system applies?

10 THE CHAIRMAN: Delegate Mudd.

11 DELEGATE MUDD: I would yield to Delegate James.

12 THE CHAIRMAN: Delegate James.

13 DELEGATE JAMES: If I am not mistaken, this is
14 comparable to the Jersey system, where they have an up-and-
15 down straight line system of administration. It has been
16 in effect there for some years.

17 THE CHAIRMAN: The Chair would concur in that
18 comment of Delegate James. I think it was put into effect
19 by Justice Vanderbilt.

20 DELEGATE MUDD: Thank you, Delegate James.

21 THE CHAIRMAN: Are there any other delegates

1 desiring to speak in favor of the amendment? Any delegates
2 desire to speak in opposition to the amendment? Delegate
3 Henderson.

4 DELEGATE HENDERSON: I hope I am not violating
5 the rule by speaking twice on the same matter, but I thought
6 it might be helpful to just run over very briefly the exist-
7 ing rule of the Court of Appeals, to give you some idea of
8 what kind of duties an administrative judge is supposed to
9 perform. In this rule, assignment and reassignment of any
10 judges to sit in any specific case or cases for any specific
11 system, as the business may require; assignment of cases for
12 trial or hearing; designation of days when the judges sit;
13 preparation of the budget; ordering and purchase of all
14 equipment and supplies, and for the court and its ancillary
15 services such as magistrates, auditors, court stenographers,
16 jury commissioners, staff of the medical and probation
17 officers, including all court personnel other than the per-
18 sonnel comprising the clerks of office; supervision and
19 responsibility for the employment, discharge and classifi-
20 cation of all court personnel, and his ancillary services,
21 and so on.

1 It is a big job, and a big administrative job
2 that we have in mind here.

3 THE CHAIRMAN: Delegate Henderson, the Chair
4 wasn't clear on what you said at the beginning of your
5 statement. What you were reading were the administrative
6 duties of the present chief judge under the present Con-
7 stitution or under the contemplated?

8 DELEGATE HENDERSON: I am quoting from the rule
9 adopted, the present rule of the Court of Appeals of
10 Maryland outlining the duties of an administrative judge.

11 THE CHAIRMAN: Under the present Constitution?

12 DELEGATE HENDERSON: Under the present Consti-
13 tution.

14 THE CHAIRMAN: Delegate Cardin.

15 DELEGATE CARDIN: I wonder if Delegate Henderson
16 would yield to a question.

17 THE CHAIRMAN: Delegate Henderson, do you yield
18 to a question?

19 DELEGATE HENDERSON: Yes.

20 THE CHAIRMAN: Delegate Cardin.

21 DELEGATE CARDIN: Would you explain to me how, if

1 in any way, the responsibilities of chief judge would dif-
2 fer if the governor appointed the other chief judges.

3 THE CHAIRMAN: Delegate Henderson.

4 DELEGATE HENDERSON: Well, if he appointed the
5 other chief judges, and they were expected to perform any
6 administrative duties, they wouldn't be subject to the con-
7 trol, really, of the person who is responsible; that is,
8 the Chief Judge of the Court of Appeals. The idea of hav-
9 ing him as chief judge is simply so that they would have
10 sufficient authority to carry out the administrative duty
11 which he contemplates.

12 THE CHAIRMAN: Any further discussion? Delegate
13 Mason.

14 DELEGATE MASON: I would like to ask the Chair-
15 man a question.

16 THE CHAIRMAN: Delegate Mudd, do you yield to a
17 question?

18 DELEGATE MUDD: Yes, Mr. Chairman.

19 THE CHAIRMAN: Delegate Mason.

20 DELEGATE MASON: Delegate Mudd, would this ad-
21 ministrative judge perform any other duties other than

1 administration?

2 THE CHAIRMAN: Delegate Mudd.

3 DELEGATE MUDD: None that I can think of. That
4 is the whole idea, administrative functions.

5 THE CHAIRMAN: Are you ready for the question?
6 Delegate Mudd.

7 DELEGATE MUDD: Did Delegate Mason mean would he
8 also take his turn on the Bench in the ordinary course?

9 THE CHAIRMAN: Delegate Mason.

10 DELEGATE MASON: Yes, I wondered if he would
11 rotate also.

12 THE CHAIRMAN: Delegate Mudd.

13 DELEGATE MUDD: Of course he would.

14 THE CHAIRMAN: Are you ready for the question?
15 The Clerk will sound the quorum bell.

16 The question arises on the adoption of Amend-
17 ment No. 53, as modified. A vote Aye is a vote in favor of
18 the amendment as modified. A vote No is a vote against.
19 Cast your votes.

20 THE CHAIRMAN: Has every delegate voted? Does
21 any delegate desire to change his vote? The Clerk will

1 record the vote.

2 There being 34 votes in the affirmative and 89
3 in the negative, the motion is lost. Amendment 53 as modi-
4 fied is rejected.

5 DELEGATE TAWES: Mr. Chairman.

6 THE CHAIRMAN: Delegate Tawes.

7 DELEGATE TAWES: Mr. Chairman, and fellow dele-
8 gates, I should like to have this Committee of the Whole
9 and this Convention to welcome to this Convention this
10 morning thirty-nine students of the Carter Woodson High
11 School in Somerset County, members of the civic class there,
12 with their teachers, professors and Mrs. Horace Jackson.
13 Join me in giving them a warm welcome, please. (Applause.)

14 THE CHAIRMAN: Delegate Mitchell.

15 DELEGATE MITCHELL: Mr. President, and members
16 of the Convention, I would like to welcome also Mr. Saunders
17 Marshall, instructor at the Boys' Village in Cheltenham,
18 Maryland, and his students, who are with us today. Mr.
19 Marshall is also Vice-President of the Prince Georges County
20 Branch of the N.A.A.C.P. (Applause.)

21 THE CHAIRMAN: Delegate Scanlan.

1 DELEGATE SCANLAN: I would like to welcome
2 Vincent Crawford, the son of Mrs. Marjorie Crane, our
3 Deputy Director of Information. He is a student at George-
4 town Prep and a friend of my son's, and he is in the gal-
5 lery today in the rear. (Applause.)

6 THE CHAIRMAN: Delegate Wheatley.

7 DELEGATE WHEATLEY: Mr. Chairman, I would like
8 to at this time note the presence in this historic Conven-
9 tion of a group that comes from a school in which history
10 is much a part of it, located on the site of Old Fort
11 Federal within walking distance of Fort McHenry, birthplace
12 of the Star-Spangled Banner. We have a group of students
13 accompanied by their instructor, Mr. Kuhn from Southern
14 High School, and I wish to accord a great welcome to them.
15 (Applause.)

16 THE CHAIRMAN: Are there any further amendments
17 to Section 5.29?

18 (There was no response.)

19 The Chair hears none.

20 We will take up Section 5.30. Delegate Johnson,
21 do you still desire to offer your amendment "O"?

1 DELEGATE JOHNSON: If you will give me a minute,
2 Mr. Chairman. We have three amendments. I want to hopeful-
3 ly just offer one.

4 THE CHAIRMAN: The Chair has three amendments,
5 Delegate Johnson. Each seems to be different. None seems
6 to be in any way a substitute for the other.

7 If you still desire to offer them, the Chair
8 would propose to offer O, P, N.

9 DELEGATE JOHNSON: Originally it was supposed
10 to be all one amendment. What order did you suggest?

11 THE CHAIRMAN: O. I have no strong feeling.
12 I will offer them any way you want. It seemed to me that
13 was the logical order. O was the simplest of all. Dele-
14 gate Johnson.

15 DELEGATE JOHNSON: Would it be possible to con-
16 sider all the amendments together?

17 THE CHAIRMAN: No, I don't think we can do that.
18 We can take them up one after the other. I have no objec-
19 tion to informing the Committee of the Whole of the pendency
20 of the other two amendments. I don't think we can consider
21 them all at one time. Delegate Johnson, I am not aware of

1 your problem. Maybe if I was, I could offer a suggestion.

2 DELEGATE JOHNSON: Mr. Chairman, if we could
3 amend an amendment, I think we could best arrive at the
4 issue. I would suggest perhaps Amendment O, and then amend-
5 ing that amendment. We can do that.

6 THE CHAIRMAN: The pages will distribute Amend-
7 ment O. This will be Amendment No. 54. The Clerk will read
8 the amendment.

9 MR. QUILLEN: Amendment No. 54 to accompany
10 Minority Report No. JB-1 to Committee Recommendation No.
11 JB-1 by Delegates Johnson, Harkness, Hickman, Kahl, Murphy,
12 Siewierski and Rush: On Page 9, Section 5.30 Clerks of
13 Court, Line 49, after the word "Court" add the words "in
14 each county".

15 THE CHAIRMAN: Delegate Johnson, the Debate
16 Schedule indicates a controlled time for an amendment or
17 amendments encompassing selection of Superior Court clerk in
18 each county and appointment of District Court clerk in each
19 county as prescribed by law, apparrrntly to be considered
20 together. I don't seem to have an amendment encompassing
21 the second part of that. Is there another amendment I

1 don't have?

2 DELEGATE JOHNSON: There was supposed to be, Mr.
3 Chairman, and that is what has caused me some trouble and
4 delay.

5 THE CHAIRMAN: Do you know the number or the
6 letter?

7 DELEGATE JOHNSON: No, I assumed it was in this
8 package, and perhaps I misread one of the amendments, but I
9 see now in reviewing it that it is not there. I think we
10 can correct it, Mr. Chairman if I am permitted to amend
11 Amendment No. O.

12 THE CHAIRMAN: Very well. Amendment 54. The
13 Clerk will read the amendment, please.

14 (At this point Amendment No. 54 was read and
15 seconded.)

16 The amendment having been read and having been
17 made and seconded, the Chair recognizes Delegate Johnson
18 to speak to the amendment. Controlled time is ten minutes.

19 DELEGATE JOHNSON: Mr. Chairman, I would move to
20 amend Amendment No. 54 so that it would also provide that the
21 last word in Line 49 of the Majority Report, Page 9, be

1 changed from "rule" to the word "law".

2 THE CHAIRMAN: Delegate Johnson, I point out to
3 you that that would be inconsistent with your proposed
4 Amendment P. You would then withdraw Amendment P?

5 DELEGATE JOHNSON: That is correct, Mr. Chairman.

6 THE CHAIRMAN: What are the additional words?
7 Delegate Johnson.

8 DELEGATE JOHNSON: Mr. Chairman, in order to be
9 perfectly accurate, I would guess it should be "shall be
10 prescribed by law", rather than "governed by law".

11 THE CHAIRMAN: You would strike the words
12 "governed by rule" and insert the words "prescribed by law"?

13 DELEGATE JOHNSON: That is correct, Mr. Chairman.

14 THE CHAIRMAN: In the absence of objection, the
15 Chair will consider Amendment No. 54 to be modified to read
16 as follows: On Page 9, Section 5.30, Clerks of Court,
17 Line 49, add after the word "court", add the words "In each
18 county" and strike the words "governed by rule" and substi-
19 tute in lieu thereof the words "prescribed by law".

20 Is that correct, Delegate Johnson?

21 DELEGATE JOHNSON: That is correct.

1 THE CHAIRMAN: Is there any objection? There
2 being no objection, the amendment is so modified.

3 The Chair recognizes Delegate Johnson for ten
4 minutes of controlled debate.

5 DELEGATE JOHNSON: Mr. Chairman, fellow dele-
6 gates, I will not need the ten minutes of controlled debate.

7 We believe that the Majority was entirely cor-
8 rect in providing that clerks on the Superior Court level
9 shall be selected in a manner prescribed by law.

10 For the sake of consistency, for the sake of re-
11 moving our judges from the task of providing for hiring
12 and firing District Court clerks, to save our judges the
13 embarrassment of being accused of delving into politics,
14 to prevent suits, charges and counter-charges concerning
15 disgruntled applicants and clerks who were dismissed, we
16 urge that this entire matter of clerkship be left in the
17 hands of the legislature.

18 It is without a doubt a non-judicial function,
19 and it is one where we are quite certain will create prob-
20 lems untold in our judicial system if we permit or if we
21 make the great judges in Maryland appoint clerks on the

1 District Court level.

2 It is properly a legislative matter. It is as
3 clear as a bell to the members of the Minority. We can
4 only hope that the Committee of the Whole will agree.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

1 THE CHAIRMAN: Delegate Mudd.

2 DELEGATE MUDD: Mr. Chairman, may I yield three
3 minutes of my controlled time on this amendment to Delegate
4 John Hargrove.

5 THE CHAIRMAN: To whom?

6 DELEGATE MUDD: Delegate Hargrove.

7 THE CHAIRMAN: Delegate Hargrove.

8 DELEGATE HARGROVE: Mr. Chairman, we have just
9 four tier
recently put together a court system calling for new ad-
10 ministration from top to bottom. I would like to first
11 say that the report of the majority is a compromise. The
12 Convention should know that there was a stalemate on
13 whether or not Clerks should be elected or appointed by
14 the court and the majority opinion is a compromise.

15 However, I would like to point out to you
16 certain things. It is suggested to you that the judges
17 should be removed from the task of appointing clerks and
18 also of hiring clerks. I think the Convention knows what
19 the courts do today.

20 I would first point out that every clerk except
21 possibly one that I know of in Baltimore City was

1 appointed by the Supreme Bench in the Baltimore City
2 District. This is a function given to the judge as a
3 part of our present Constitution.

4 Also, our present Constitution provides for
5 the judge to have visitorial rights in all clerks' offices
6 to give the courts complete responsibility for that office
7 including the authorization of the appointment of deputy
8 clerks and other persons to administer the duties of the
9 office, so we are not really giving the judges much more
10 than they have at the present time.

11 I would like to next go to the lowest court
12 level, but you remarked that the appointment of clerks
13 at the lower level is a function of the legislature. It
14 does not bear a test of our Constitutional history. I
15 will point out that the Constitution of Maryland providing
16 particularly for the lowest court system, the People's
17 Court of Baltimore City, for example specifically does
18 give to the judges the power to appoint clerks.

19 The Municipal Court, which was created just a
20 few years ago, also provides that the judges appoint the
21 chief clerk of that particular court.

1 In all of the recently-created people's courts
2 in the state of Maryland, this function is either exer-
3 cised by the court itself or in conjunction with the county
4 council as it is in Montgomery County .

5 I would therefore point out to you, that the
6 trend, particularly in the lower court, is away from the
7 legislature making appointments, but in the hands of the
8 court which has the job of administering the court itself
9 which includes the day to day functioning of a clerk's
10 office.

11 I request that the amendment should be turned
12 down.

13 THE CHAIRMAN: Delegate Mudd.

14 DELEGATE MUDD: Mr. Chairman, may I yield to
15 Delegate Marvin Smith.

16 THE CHAIRMAN: Delegate Smith.

17 DELEGATE M. SMITH: What Delegate Hargrove has
18 told you with reference to the compromise of the Committee
19 on the Superior Court is correct. The vote was 9/9 with
20 one abstention.

21 On the question of appointing a clerk or electing

1 a clerk -- and I suppose that if one of us who had voted
2 some other time or most of the time, had voted the vote
3 for appointment, this is what would have come out on the
4 floor.

5 The District Court system is an attempt for the
6 politicians to reach out and get some things, some goodies.
7 In the area in which I have operated, I have noted that
8 the clerks to the trial magistrates were appointed by the
9 trial magistrates.

10 Democrat or Republican campaign, there has been
11 no change including Caroline County
12 including the great county of Georgia.

13 I would hope that we leave it precisely as it
14 is written here, and what is basically the present system
15 which is that the courts select the clerks at the lowest
16 level.

17 THE CHAIRMAN: Delegate Mudd.

18 DELEGATE MUDD: Mr. Chairman, I yield three
19 minutes to Delegate Marion.

20 THE CHAIRMAN: Delegate Marion.

21 DELEGATE MARION: Mr. Chairman, I won't take all

1 of that time. I don't want to belabor this issue. The
2 arguments have been stated by my two predecessors who have
3 spoken to this; I believe the office of the clerk and the
4 judicial functions which the clerks perform are or should
5 be, if they are not now, an integral part of the proper
6 administration of justice and the administration of the
7 court system.

8 For that reason, I believe this amendment should
9 be defeated, because I think that puts a chink in what
10 should be the orderly administration of the clerks' offices
11 to really an arm of a court in handling the courts docket
12 and matters pertaining to court administration.

13 I urge defeat of the amendment.

14 THE CHAIRMAN: Delegate Johnson.

15 DELEGATE JOHNSON: Mr. Chairman and fellow
16 delegates, I would like to point out that the amendment
17 that is before us lost before our committee by a vote of
18 9 to 10. I would further like to point out that although
19 an arrangement similar to what Delegate Hargrove indicated
20 is in existence in certain courts in Baltimore City, what
21 we are concerned about is the entire judicial system

1 throughout the state.

2 Someone will have to spell out for me why is it
3 allegedly evil or political for the minority to seek
4 consistency in the Judicial Article by providing for
5 the designation of clerks in a manner prescribed by law
6 on the District court level, when the majority would
7 have you believe that there is a division, and any division
8 should resolve itself on a superior court level.

9 I guess it really boils down to if you don't
10 want to do something, any reason is as good as any other.

11 Now, it seems to me if the majority thinks that
12 the superior court judges should be selected in a manner
13 prescribed by law, you should make the majority be
14 consistent in this particular round. You should remove
15 the judges in our state from this political patronage
16 situation, and I believe that one will exist as a result
17 of this, and let the legislature designate clerks of
18 the court, their manner of selection and appointment;
19 first of all their manner of selection on a superior court
20 level, and their manner of appointment for the sake of
21 term on the District court level.

1 THE CHAIRMAN: Delegate Mudd, you have approxi-
2 mately four minutes.

3 DELEGATE MUDD: I will use one and a half, Mr.
4 Chairman.

5 Ladies and gentlemen of the committee: the dif-
6 ference in our recommendations where the spokesman for
7 the minority appears not to see the difference is that
8 with respect to clerks in the superior court, we ask
9 that the legislature, by law, provide for the selection.

10 That would include the right of the legislature to
11 provide for the election or appointment of superior court
12 clerks which we feel is properly left to the wisdom of
13 the legislature.

14 With respect to the District court clerks, both
15 the minority and majority agree that they should be ap-
16 pointed. The only difference this amendment proposes
17 to make is that the appointment and terms, that is, the
18 method of appointment, by whom it should be made and
19 terms prescribed by law, we feel it is essential to the
20 proper administration of justice, particularly at this
21 lower level in courts of limited jurisdiction, that the

1 appointment of these clerks, these terms be by rule, because
2 it is the function of the rule of court, rather than rule
3 of law, to effectively operate the court system.

4 We therefore respectfully urge that you defeat
5 this amendment.

6 THE CHAIRMAN: Any delegate desire to speak in
7 favor of the amendment?

8 Any delegate desire to speak in opposition?

9 Any question?

10 The Clerk will ring the quorum bell.

11 The question arises on the question of the
12 adoption of Amendment 54 as modified. A vote Aye is a vote
13 in favor of the amendment as modified. A vote No is a
14 vote against the amendment as modified.

15 Cast your vote.

16 Have all delegates voted? Does any delegate
17 desire to change his vote?

18 The Clerk will record the vote.

19 There being 41 votes in the affirmative and 82
20 in the negative, the motion is lost and the amendment
21 fails.

1 Delegate Rybczynski, for what purpose do you
2 rise?

3 DELEGATE RYBCZYNSKI: Mr. Chairman, I should
4 like to ask the Chair a question, if I may.

5 THE CHAIRMAN: The Chairman of the Committee of
6 the Whole or the Chairman of the Committee on the Judicial
7 Branch?

8 DELEGATE RYBCZYNSKI: The Chairman of the
9 Committee as a Whole.

10 THE CHAIRMAN: Just a second, try it again.

11 DELEGATE RYBCZYNSKI: Mr. Chairman, apparently
12 by passing out of the resolution of Amendment Number 22 we
13 are in for a minute of humor.

14 Since the Chair passed out a rule the other day
15 that all extraneous matters printed by the printing
16 shop will be paid for by the proposer, will this be paid
17 for by Delegate Gallagher, the proposer?

18 THE CHAIRMAN: The Chair considered the question
19 when the Clerk presented it, but Delegate Gallagher
20 insisted there was no mirth intended, he was quite
21 serious .

1 Delegate Rybczynski?

2 DELEGATE RYBCZYNSKI: In view of the fact he
3 is serious, I would like to ask Delegate Gallagher two
4 questions. Number one, can we suspect anything by your
5 filing this thing today long after your section is com-
6 pleted, and number two, if we will look on page two, from
7 lines 4 to 10, it appears as the votes rise, the fine
8 goes down.

9 In view of this theory, doesn't it appear a
10 man who thinks he is going to lose very badly is going to
11 hang on hoping his friends will vote with him, so he
12 won't be fined heavily?

13 THE CHAIRMAN: The Chair recognizes Delegate
14 Gallagher and gives you five minutes to reply to each
15 question.

16 DELEGATE GALLAGHER: Yes.

17 THE CHAIRMAN: The Chair recognizes Delegate
18 Clagett.

19 DELEGATE CLAGETT: Recognizing this is a matter
20 of great impact upon this assembly, I would like to ask
21 Delegate Gallagher this question: How can I vote in favor

1 of the resolution?

2 THE CHAIRMAN: The Chair will give him the
3 floor to respond at a later date.

4 Delegate Johnson.

5 DELEGATE JOHNSON: Mr. Chairman, according to
6 the terms of the resolution, I believe I would owe Dele-
7 gate Gallagher \$3.00.

8 Now, I would like to see him come over here and
9 try to collect.

10 THE CHAIRMAN: I might suggest that there are
11 provisions under the rules where the delegates can have
12 the assistance of the Sergeant at Arms. (Laughter.)

13 Delegate Weidemeyer.

14 DELEGATE WEIDEMEYER: I wonder if Delegate
15 Gallagher would accept an amendment to this. (Laughter.)
16 It would, in substance, provide that all of these fines
17 collected would be used to defray the transportation
18 expenses of the President of a natural gas company to come
19 down here and study a great source for one of our natural
20 resources.

21 THE CHAIRMAN: Delegate Bennett.

1 DELEGATE BENNETT: Mr. Chairman, I wonder if Dele-
2 gate Gallagher realizes he is like the Egyptian mummy
3 being pressed for time.. (Laughter.)

4 THE CHAIRMAN: Delegate Wheatley.

5 DELEGATE WHEATLEY: I would like to ask Delegate
6 Gallagher in line 15, when it says "30 minutes, then
7 the sponsor shall be quartered," is there a butcher in
8 the house?

9 THE CHAIRMAN: Delegate Gallagher.

10 DELEGATE GALLAGHER: When the vote comes up
11 with respect to Attorney General, the answer will definitely
12 be yes.

13 THE CHAIRMAN: Delegate Johnson, do you still
14 wish to add your amendment N?

15 DELEGATE JOHNSON: Can we vote on Resolution
16 22 first? It will not be necessary to introduce
17 motion Number N.

18 THE CHAIRMAN: As the Chair understands it, you
19 have no further amendments to Section 5.30. You still
20 have Section 5.30 under consideration. And there is ano-
21 ther minority report, JB-1 (B).

1 The Chair recognizes delegate Dulany to present
2 the minority report. Come to the reading desk.

3 You should have before you Minority Report
4 JB-1B, Delegate Dulany.

5 DELEGATE DULANY: Mr. Chairman, and fellow
6 delegates, I am sure you know by now that the majority and
7 minority in the judicial branch committee were not
8 necessarily composed of those who represent the majority
9 and minority on the floor. There was considerable debate
10 on many of the provisions in there and we were broken
11 up on several sections and this was one.

12 The amendment about the selection of court
13 clerks is somewhat, I would say, of a political problem
14 in this state. There was some testimony before our com-
15 mittee that if we would eliminate the election of court
16 clerks, it might place the whole Constitution in jeopardy.

17 I think we ought to take a look at what we have
18 in relation to the court clerks around the state. First, in
19 the Court of Appeals, we have an appointed clerk, a clerk
20 appointed by the court. We have the same situation in
21 the Special Court of Appeals. We have the same situation

1 virtually in the courts of limited jurisdiction, although
2 they are somewhat at variance.

3 As you know these courts vary somewhat from coun-
4 ty to county. It is only in the Circuit court that we have
5 an elected clerk. Their functions and duties -- you will
6 find that they do many things that really are not judicial
7 functions.

8 For example the clerk of the Circuit court, and
9 I am told that there are some 600 sections in the code --
10 I have never checked it out -- on duties that have been
11 placed on the circuit court clerks, but for example he
12 handles all the recording, the recording of deeds, mort-
13 gages, retail sales agreements. He handles the agency
14 docket, the corporation record and so forth.

15 He is in most counties the seller or vendor of
16 licenses for retailers. When beer stamps were sold, no
17 lawyer could get near the courthouse because they were
18 lined all around the courthouse and down the next block.

19 He also performs the village ceremonies. He
20 collects fees and deposits. He certifies the land for
21 bail. He issues many state commissions, notary commissions,

1 and he handles, as we all know, the filing of election
2 papers.

3 These are only a few of the things they
4 perform. Actually, the circuit court clerk today is the
5 highest resident state official in the country who is
6 elected, but he must also in addition to all the functions
7 I have given him, perform his services as clerk to the
8 judge of the circuit court, which will become the Superior
9 Court under the article we have adopted.

10 His obligations are to maintain the dockets, to
11 swear witnesses, to collect fines and perform the normal
12 duties of a court clerk under the direction of the judge.

13 Our committee debated a long time, long and
14 hard on this particular issue, and we heard some testimony
15 as follows in regard to the circuit court clerks, that
16 in some courthouses in this state you must have political
17 connections in order to secure a job in the courthouse.

18 Sometimes when you secure this job it may be a
19 lifetime position unless you can be removed for cause but,
20 nevertheless, the original political connection is required.
21 We have a letter from a person who worked in a number of

1 Eastern counties and he was removed when new court clerks
2 were elected because he didn't fit **their** political liking.

3 We have evidence of disagreements which exist
4 between court clerks and judges which cause problems in
5 the judicial operation of the courts. We also have much
6 testimony and much evidence that in many counties where
7 there is a good relationship, the court clerk stays on for
8 years and years -- as a matter of fact almost for life.

9 There was a proposal in the local government
10 article that there be a county clerk perhaps who would
11 be elected in each county. This clerk would be elected
12 to perform the non-judicial functions, the functions not
13 related to the court office. He would in effect be the
14 highest elected resident official in that county.

15 The judge doesn't want to be bothered with the
16 sale of licenses and beer stamps as I have mentioned and
17 there are many features that are now performed by the circuit
18 court clerks which the judge does not want to be concerned
19 with; he is interested in the efficient administration of
20 his court.

21 Our proposal and our minority report would provide

1 for an appointment clerk to the judge who would perform
2 the judicial functions, who would recommend that the com-
3 mittee reconsider the proposal before it to have an
4 elected county clerk.

5 In our committee we could not get agreement
6 on court clerks. We could not get majority agreement on
7 whether the clerk of the circuit court should be elected
8 or appointed. Finally, in a compromise we came up with
9 a proposal which is before you on the floor, the proposal
10 that we leave to the legislature the method to select the
11 circuit court clerk.

12 The history in Maryland, of court clerks, I think
13 is somewhat important. In the original Constitution all
14 clerks were appointed. It was not until 1851 that clerks
15 were elected. In 1857 for the first time the Constitution
16 provided that the Court of Appeals clerks were elected
17 but in the Constitutional amendment adopted by the people
18 in 1956, this was removed and that clerk was appointed.

19 Also, the appointment of the county clerk was
20 reduced from six years to four years.

21 Most of you received the study on the Maryland

1 judicial system. I would like to read one section on
2 page 50 which reads as follows: "Another desirable change
3 would be to make clerks full time officials, functioning
4 under the general supervision of the judges. As indicated
5 above, many court clerks today are performing additional
6 functions unrelated to judicial business, and trying to
7 serve many masters. This need not be so in the future, when
8 there will be ample work in a properly organized judicial
9 system for full time court clerks answerable to the judges
10 alone. As the National Conference of Chief Justices said
11 in 1966: "Within the limits set by law, courts should
12 have full responsibility for supervising the employees
13 upon whom they must rely to administer the business of the
14 courts. Thus the independent authority of courts to
15 hire and fire their employees, to fix and adjust their
16 salaries, and to assign them duties, should not be
17 subject to the approval or control of any non-judicial
18 agency."

19 We suggest that the circuit or superior court
20 clerk should be appointed under the articles we now have
21 that the clerk of the Court of Appeals be appointed, that

1 the clerk of the Intermediate Court of Appeals be appoint-
2 ed, and that the clerk of the District Court be appointed.

3 The only loophole or the only hole is leaving
4 the superior court clerk up to the legislature. Here
5 we have a clerk who probably will be elected and respon-
6 sible to the judge and who is also responsible to a chief
7 judge who is appointed. We therefore strongly urge that
8 you adopt the minority report on this article.

9 THE CHAIRMAN: Are there any questions of the
10 minority spokesman?

11 Delegate Darby.

12 DELEGATE DARBY: Delegate Dulany, did you say the
13 appointed superior court clerk is solely responsible to the
14 judges?

15 THE CHAIRMAN: Delegate Dulany.

16 DELEGATE DULANY: If he is appointed by the judge
17 yes. But the article would prescribe that he be appointed
18 by rule.

19 THE CHAIRMAN: Delegate Darby.

20 DELEGATE DARBY: But the purpose of your forth-
21 coming amendment would serve to take it out of your

1 appointed offices, isn't that correct?

2 DELEGATE DULANY: Yes.

3 THE CHAIRMAN: Delegate Darby.

4 DELEGATE DARBY: Don't you feel he has some func-
5 tions that he should be responsible to the people for?

6 THE CHAIRMAN: Delegate Dulany.

7 DELEGATE DULANY: There are two basic reasons for
8 that, either because he is a policy maker or he is dealing
9 with the public generally from time to time, and the entire
10 public. I think that the court clerk is not a policy-
11 making job, so that isn't a reason for electing him. At
12 the present time, for all the duties he has been saddled
13 with, maybe he is responsible to the public. Many of
14 these duties should be placed in another office. The court
15 clerk is an administrator. I think he should be appointed
16 by the court and responsible to the courts.

17 THE CHAIRMAN: Delegate Darby.

18 DELEGATE DARBY: You are saying you will set
19 up two different types of clerks?

20 THE CHAIRMAN: Delegate Dulany.

21 DELEGATE DULANY: As far as the courts are

1 concerned, only one. I think it would be advisable to have
2 an official, I suggest an elected one, who would be the
3 highest elected resident official in that county, who could
4 handle the recording, the marriages and the selling of
5 licenses and many things that have been put on the court
6 clerk, because there was no one else to do them.

7 THE CHAIRMAN: Delegate Churchill Murray.

8 DELEGATE C. MURRAY: Delegate Dulany, I under-
9 stand that it is your proposal that there be --

10 THE CHAIRMAN: Delegate Murray, we cannot hear
11 you.

12 DELEGATE C. MURRAY: Do I understand that it is
13 your proposal that there be two employees, one who is
14 truly a clerk of the court and the other who will assume
15 those duties which have gradually been put into the hands
16 of someone who is now known as the clerk of the court?

17 THE CHAIRMAN: Delegate Dulany.

18 DELEGATE DULANY: That is correct.

19 THE CHAIRMAN: Delegate C. Murray.

20 DELEGATE C. MURRAY: And there are endless duties
21 that that person performs as you enumerated.

1 THE CHAIRMAN: Are you asking a question now,
2 Delegate Murray?

3 DELEGATE C. MURRAY: I am trying to formulate
4 it.

5 THE CHAIRMAN: Delegate Key.

6 DELEGATE KEY: Delegate Dulany, I would like
7 to know since we have gone into a merit system for ap-
8 pointing judges if it is not possible that the legislature
9 might choose a merit system of appointing the clerk rather
10 than the elected system as you assume.

11 THE CHAIRMAN: Delegate Dulany.

12 DELEGATE DULANY: I think the merit system could
13 very well be applied to the court clerk's office.

14 THE CHAIRMAN: Are there any further questions
15 of the minority spokesman?

16 Delegate Needle?

17 DELEGATE NEEDLE: I am inclined to support the
18 minority spokesman's position here but you alluded to
19 differences between elected clerks and judges; could you
20 elaborate briefly on matters in which elected clerks could
21 obstruct justice?

1 THE CHAIRMAN: Delegate Dulany.

2 DELEGATE DULANY: When you have an employee
3 who is working for you who is chosen by someone else who
4 works as closely as a court clerk does with a judge and
5 there are personality differences, I can attest to this on
6 several occasions where I know this has occurred.

7 The judge has to live with the elected clerk
8 until the next election, whereas if he has a clerk that he
9 has appointed he can select someone who he feels better
10 qualified perhaps or not, or at least someone with
11 whom he can work in an easy manner.

12 THE CHAIRMAN: Delegate Child.

13 DELEGATE CHILD: Have you given any considera-
14 tion to the amount of time that the present clerks of the
15 court attend to court work and the amount of time that they
16 devote to the other work of their office?

17 THE CHAIRMAN: Delegate Dulany.

18 DELEGATE DULANY: Judge, I made no study of it,
19 but I do know from personal observation that in some
20 courts the elected clerks do very little with respect to
21 the court administration and in other courts they do a lot.

1 In our county, I believe our elected clerk does
2 very, very little in connection with the court work. As
3 I recall the testimony, the smallest clerk's office in
4 the state has maybe three or four employees. I believe the
5 smallest clerk's office in the state has three or four
6 employees in addition to the clerk himself.

7 THE CHAIRMAN: Delegate Child.

8 DELEGATE CHILD: So that your provision would
9 provide where there is one clerk now doing all the work,
10 a small portion of which is connected with court work,
11 it would provide for two clerks, one to do the court work
12 and the other to do the recording and the issuance of
13 licenses and so forth?

14 THE CHAIRMAN: Delegate Dulany.

15 DELEGATE DULANY: That is correct, but I don't
16 think it would require any additional employees on the
17 taxpayer's payroll, so to speak, because as I understand
18 it each clerk's office in the state has perhaps three or
19 four employees, so we would perhaps have two officials in
20 there and then the employees could do whatever additional
21 work is required.

1 THE CHAIRMAN: Delegate Child.

2 DELEGATE CHILD: Would you not have two clerks
3 where you have one now?

4 THE CHAIRMAN: Delegate Dulany.

5 DELEGATE DULANY: You would have one clerk per-
6 forming the judicial functions and one not. If you want
7 to call one a clerk as they do in New England where they
8 have county clerks system, yes, you would have two.

9 THE CHAIRMAN: Delegate Child.

10 DELEGATE CHILD: Would you have two clerks'
11 offices where you have one clerk now?

12 THE CHAIRMAN: Delegate Dulany.

13 DELEGATE DULANY: I would leave this to the
14 legislature. I believe it would be good to have a uniform
15 system in the state for purposes of reporting.

16 THE CHAIRMAN: Delegate Child.

17 DELEGATE CHILD: Are you aware that the question
18 of space is rather important in at least some counties?

19 THE CHAIRMAN: Delegate Dulany.

20 DELEGATE DULANY: Yes, I am.

21 THE CHAIRMAN: Delegate Child.

1 DELEGATE CHILD: That is all.

2 THE CHAIRMAN: Delegate Singer? Any further
3 questions?

4 Delegate Hutchinson.

5 DELEGATE HUTCHINSON: Delegate Dulany, as I under-
6 stand it, there will be no guarantee that a county clerk
7 would be elected, is that true?

8 THE CHAIRMAN: Delegate Dulany.

9 DELEGATE DULANY: Delegate Hutchinson, under our
10 proposal, the only amendment we are offering here, and if
11 I may, I will read the amendment as we have drawn it:

12 "The clerk of the Superior Court in each
13 county and the clerk of the District Court in each county
14 shall be appointed in the manner and for the term pre-
15 scribed by rule to perform those judicial functions and
16 administrative duties with respect to their courts as
17 are prescribed by rule."

18

19

20

21

1 We would have a clerk appointed to perform judi-
2 cial and administrative functions. There is no amendment
3 to have a county clerk elected.

4 THE CHAIRMAN: Delegate Hutchinson.

5 DELEGATE HUTCHINSON: Would it be possible to
6 ask Delegate Moser pertaining to this minority recommen-
7 dation?

8 THE CHAIRMAN: Is it related to the question you
9 just asked Delegate Dulany?

10 DELEGATE HUTCHINSON: Yes.

11 THE CHAIRMAN: Delegate Moser, can you yield to
12 a question?

13 DELEGATE MOSER: Yes.

14 THE CHAIRMAN: Delegate Hutchinson.

15 DELEGATE HUTCHINSON: Did the local government
16 committee take into consideration the election of a
17 county clerk?

18 THE CHAIRMAN: Delegate Moser.

19 DELEGATE MOSER: There is no specific provision.
20 Under the section that was adopted by the committee as a
21 whole, the individual county could provide for an elected

1 clerk if the county wanted to, or the type Delegate Dulany
2 is speaking of, subject to withdrawal of that power.

3 THE CHAIRMAN: Delegate Hutchinson, the Chair
4 might suggest to you that the position that Delegate Dulany
5 has described is a state official. He refers to him as
6 the highest elected state official in the county. If so, he
7 would not be a county official and not within the province
8 of the Committee on Local Government, but the Committee
9 on the Executive Branch.

10 Delegate Della.

11 DELEGATE DELLA: Delegate Dulany, under your
12 system, which clerk would be responsible for the court
13 records?

14 THE CHAIRMAN: Delegate Dulany.

15 DELEGATE DULANY: There would only be one court
16 clerk that would be the person who would be appointed. He
17 would be responsible for the court records.

18 THE CHAIRMAN: Delegate Della.

19 DELEGATE DELLA: He would collect the fees and
20 transmit them to the comptroller?

21 THE CHAIRMAN: Delegate Dulany.

1 DELEGATE DULANY: Which fees?

2 DELEGATE DELLA: Fees to file papers and court
3 costs.

4 THE CHAIRMAN: Delegate Dulany.

5 DELEGATE DULANY: He would handle that.

6 THE CHAIRMAN: Delegate Della.

7 DELEGATE DELLA: Then collecting fees from
8 hunting and marriage licenses and what not?

9 THE CHAIRMAN: Delegate Dulany.

10 DELEGATE DULANY: In most courts this is done
11 separately even though it is handled in the clerks' office.
12 Even in our small county we have one room where we have
13 a deputy who collects those fees and the other room where
14 the hunting licenses are sold.

15 THE CHAIRMAN: Delegate Della.

16 DELEGATE DELLA: Doesn't the state recognize
17 one clerk with reference to the cost that is collected
18 and the fees that are collected?

19 THE CHAIRMAN: Delegate Dulany.

20 DELEGATE DULANY: Yes, sir. This is an effort to
21 change the existing system, that is correct.

1 THE CHAIRMAN: Any further questions of the
2 minority spokesman?

3 Delegate Vecera.

4 DELEGATE VECERA: Delegate Dulany, how do you
5 contemplate the phasing out period of the clerkship, the
6 people now serving as clerks? Would there be assurance
7 that the present clerks would now be retained or how do you
8 contemplate this situation?

9 THE CHAIRMAN: Delegate Dulany.

10 DELEGATE DULANY: Under the proposed transitory
11 provisions that have been considered by the Committee on
12 the Judicial Branch, the clerks would remain in office
13 through their existing terms.

14 THE CHAIRMAN: Delegate Vecera.

15 DELEGATE VECERA: Who will handle the land records?

16 THE CHAIRMAN: Delegate Dulany.

17 DELEGATE DULANY: The entire matter of handling
18 land records is a legislative matter. It is provided
19 by law. The 600 functions that I have mentioned are
20 handled by the clerk of the court. The legislature can
21 very easily provide for an elected county clerk in every

1 county where that had been performed by the court clerk.
2 The court clerk should be retained for judicial functions,
3 responsible to the judge and the judge shouldn't be bothered
4 with the other details of that that have no part of
5 judicial function.

6 THE CHAIRMAN: Delegate Groh.

7 DELEGATE GROH: In counties where the superior
8 court has special judges, I presume you contemplate one
9 clerk to serve all judges?

10 THE CHAIRMAN: Delegate Dulany.

11 DELEGATE DULANY: That is correct.

12 THE CHAIRMAN: Delegate Groh.

13 DELEGATE GROH: As far as selection of that
14 clerk would it be up to the majority of the judges to
15 concur?

16 THE CHAIRMAN: Delegate Dulany.

17 DELEGATE DULANY: It would be prescribed by rule.
18 I presume that would be adoptable.

19 THE CHAIRMAN: Delegate Bushong.

20 DELEGATE BUSHONG: There are a lot of records
21 not only of the recorder's office aspect, but also the

1 courts and all other kinds of records that are fully
2 within the law. Which clerk is going to be in charge?

3 THE CHAIRMAN: Delegate Dulany.

4 DELEGATE DULANY: Any records that are directly
5 connected with the court would be under the supervision of
6 the clerk of the court. The other records would be under
7 the county clerk.

8 THE CHAIRMAN: Are there any further questions?
9 Delegate Bothe.

10 DELEGATE BOTHE: Are there any areas in the judi-
11 cial functions of the clerk in which he is called upon to
12 exercise discretion or engage in policy-making functions?

13 THE CHAIRMAN: Delegate Dulany.

14 DELEGATE DULANY: There are none that I know of
15 at all. He is an administrative official.

16 THE CHAIRMAN: Delegate Bennett.

17 DELEGATE BENNETT: Under the majority report,
18 that provides that the legislature will determine the
19 method of selection of the clerk. Now, do you think that
20 there is the slightest chance that the legislature will
21 provide that this person be selected under the merit system?

1 THE CHAIRMAN: Delegate Dulany.

2 DELEGATE DULANY: Yes, I am a former member
3 of the legislature and I have confidence in the legislature.
4 It is possible that the legislature could come up with
5 the exact proposal that I am recommending.

6 Since we have all the other clerks in the
7 Constitution and the method of selection specified, this
8 should be specified. I don't think we ought to make
9 an exception of the superior court here.

10 THE CHAIRMAN: Are there any further questions of
11 the minority spokesman? If not, we will ask him to return
12 to his desk and take up the amendment.

13 Pages will please distribute Amendment "X".
14 This will be Amendment 55.

15 The Clerk will read Amendment 55 to accompany
16 Minority Report No. JB-1 (B) to Committee Recommendation
17 No. JB-1, by Delegates Dulany, Bradshaw, Hargrove, and
18 Marion.

19 MR. QUILLEN: Constitutional Amendment No. 55
20 to Accompany Minority Report No. JB-1 (B) to Committee
21 Recommendation No. JB-1, by Delegates Dulany, Bradshaw,

1 Hargrove, and Marion.

2 "On page 9 Section 5.30 Clerks of Court strike
3 out all of the last two sentences in the section on lines
4 46 through 49 and insert in lieu thereof the following:
5 'The Clerk of the Superior Court in each county and the
6 clerk of the District Court in each county shall be appoint-
7 ed in the manner and for the term prescribed by rule to
8 perform those judicial functions and administrative duties
9 with respect to their courts as are prescribed by rule.'"

10 THE CHAIRMAN: The Amendment having been seconded
11 the Chair recognizes Delegate Dulany to speak to the
12 Amendment.

13 DELEGATE DULANY: I would like to yield three
14 minutes to Delegate Marvin Smith.

15 THE CHAIRMAN: Delegate Smith.

16 DELEGATE M. SMITH: I have searched my soul as
17 much on this as anything before the commission. Although
18 I voted against this proposition in the committee, I rise
19 to support it. I might say, sir, in my talks with at
20 least one or two clerks, I found that many of their fears
21 were allayed when they found out about the transitory

1 provisions here. I would like to quote to you from
2 a letter that I received from a long-time chief deputy clerk
3 who is no longer a chief deputy clerk, having resigned.

4 And he said, "It would seem to me that the reward
5 which competence in office should merit would eventually
6 result in the steady progress of the employee in the Clerk's
7 Office from the position of least responsibility to that
8 of highest eminence.

9 "The Office of the Clerk of the Circuit Court is
10 far to important to be subject to the realm of politics and
11 the demands of politicians. The Clerk has been termed the
12 hand of the Court and when the head is not in a position
13 to control the hand a most dangerous situation can develop.

14 "From sad personal experience I know that the ap-
15 pointment and retention of experienced deputies should be
16 the prerogative of the Court and this can best be given
17 effect by making the Clerk appointive by the Court at its
18 pleasure.

19 "You will recall that I served as Chief Deputy
20 Clerk from January 10, 1927, or shortly thereafter, until
21 February 17, 1960 when I resigned. In other Counties I

1 served when competent deputies had been discharged by
2 political Clerks. I also served in Kent and Queen Annes
3 Counties when illness made this necessary. Twice, in 1938
4 and again in 1942, I was only retained in office through
5 the insistence of the Court that my services were necessary
6 to the proper conduct of the Office and following, in
7 each instance, the rejection by the Judges of the nomina-
8 tions by the Clerk of totally unqualified persons."

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Mudd.

11 DELEGATE MUDD: Mr. Chairman and ladies and
12 gentlemen of the committee. I rise to speak in opposition
13 to the amendment. As indicated by Delegate Dulany in
14 presenting his minority report, this matter has been dis-
15 cussed in great length in our committee and after a
16 protracted hearing with the representatives of the Clerk
17 of the Courts Association, the clerks serving the state
18 so well.

19 We would leave this to the legislature as
20 prescribed by law and we think that it can be adequately
21 worked out in this manner. We did discuss at some length

1 the idea of dividing the responsibilities of the clerk
2 of the court as now constituted.

3 You are all aware, I am sure, from the minority
4 report and from your knowledge of the subject that there
5 are a wealth of duties and responsibilities which now
6 evolve upon the Clerk of the Court, many of them have no
7 association with the court structure, so to speak, and
8 are not responsive to the administration of justice.

9 However, our committee could not reach a
10 conclusion as to a possible division of these responsi-
11 bilities between an elected and an appointed clerk or two
12 elected and two appointed officials. Accordingly our
13 recommendation is simply this: that the responsibility
14 is shifted to the legislature and we hope that in its
15 wisdom it can cope with the situation and best adapt the
16 orderly administration of justice as well as the other
17 duties of the clerk within whatever manner it may provide
18 for the selection, whether it be appointive or elected.

19 Accordingly, I urge you to oppose this amend-
20 ment and adopt the majority view which is that the matter
21 of clerks of the court as to selection and term be left

1 to the legislature and your vote in opposition to this
2 amendment will sustain the majority report as you have done
3 in many other instances.

4 THE CHAIRMAN: Delegate Dulany.

5 DELEGATE DULANY: I would like to yield three
6 minutes to Delegate Marion.

7 THE CHAIRMAN: Delegate Marion.

8 DELEGATE MARION: Mr. Chairman, as I observed
9 some moments ago in opposing the amendment offered by
10 Delegate Johnson, I believe that the clerks are a very
11 important integral part of the internal administration
12 of the court system and if they are not so now, they
13 should be under this new Constitution.

14 As Delegate Johnson has observed, the majority
15 report of the committee leaves an inconsistency between
16 the method of selection of the Superior Court clerk and
17 the District Court clerk and I submit that there should
18 be no such distinction for the proper administration of
19 the court system extending from top to bottom from the
20 Court of Appeals down to the District Court.

21 We have provided that the clerk of the Court of

1 Appeals be appointed, that the Clerk of the Intermediate
2 Court of Appeals be appointed, that the Clerk of the District
3 Court be appointed, but for some reason a bare majority of
4 the committee wished to leave the selection of the Clerk
5 of the Superior Court to the manner prescribed by law and
6 I submit that there is not any slightest doubt that the
7 legislature would provide that that clerk be elected.

8 In the Federal System there is an appointed
9 clerk at the District Court, I believe, and it works well.
10 I believe, ladies and gentlemen of the committee, we
11 should provide for a system in which court clerks should
12 do court duties and we should provide that the Clerk of
13 the Superior Court as well as the Clerk of the District
14 Court perform judicial functions and administrative duties
15 in connection with his respective courts.

16 At the present time what we have is a political
17 figure elected on a partisan political battle in each
18 county in the middle of the administration of justice and
19 administration of the courts.

20 We have the possibility by adopting this
21 amendment to put the final correct and refining touch to

1 a properly administered judicial system.

2 I urge your support of our amendment.

3 THE CHAIRMAN: Delegate Mudd.

4 DELEGATE MUDD: Mr. Chairman, may I yield three
5 minutes to Delegate Henderson.

6 THE CHAIRMAN: Delegate Henderson.

7 DELEGATE HENDERSON: Mr. Chairman, I do not
8 believe that at the judicial level that the clerk who
9 performs strictly judicial duties should be subject to the
10 court direction and I know that in many cases that has
11 worked out.

12 I recall that Mr. Luther Pittman, who was the
13 deputy clerk before he became clerk, was originally selec-
14 ted by the court and that is true in many other places, but
15 I was persuaded to join the vote with the majority on this
16 proposition because of the numerous practical problems
17 which are presented in unscrambling the office of the
18 clerk.

19 One thing which hasn't been mentioned or
20 was only mentioned in passing was the fact that under
21 our new proposal, the whole judicial system will be paid

1 for by the state. It will no longer be a county function.
2 Under the new article on local government, the counties
3 will acquire home rule in many departments where they
4 have not enjoyed it in the past.

5 It may well be that some of the functions
6 presently occupied by the Clerk of the Court, that is,
7 the state official and one who operates on a fee basis now
8 reporting to the comptroller and hiring people at the
9 comptroller's -- subject to the approval of the comptroller, --
10 all that will be done away with and we will have a really
11 local system of a county system whereby many of these
12 functions could be transferred.

13 Again, some of the tax-collecting functions
14 might well be transferred either to the comptroller or to
15 a new department of taxation that has long been recommended.
16 The clerks collect in Baltimore City a huge sum of money
17 from traders licenses, traders taxes and things of that
18 sort. The register of wills collects huge sums as
19 inheritance tax, and all those things could be properly
20 transferred to a state agency who would do it on a much
21 more efficient basis.

1 I suggest for all of the practical reasons and
2 because, at best, this system could never be put into
3 effect under the transitory provisions, the clerk would
4 hold for the balance of their term, so that in the meantime
5 the legislature would have a chance I think to work out
6 some of these details, whether duties would be assigned to
7 other people as between local and state officials and
8 so on.

9 THE CHAIRMAN: Your time has expired.

10 Delegate Dulany.

11 DELEGATE DULANY: I yield three minutes to Dele-
12 gate John Hargrove.

13 THE CHAIRMAN: Delegate Hargrove.

14 DELEGATE HARGROVE: Mr. Chairman, I will not
15 repeat all that has been said already as to why the
16 minority report should be adopted, but I will point
17 out ~~this~~, that today in our present court system the courts
18 in the numerous counties and the courts in Baltimore City
19 are pretty much autonomous. They are systems within
20 themselves and the counties who have today, including the
21 City of Baltimore, sole responsibility to a large extent

1 for their operations.

2 Now, we have talked about functions. I think the
3 history of the court clerk is very interesting. In the
4 State of Maryland the many functions which have been placed
5 upon the clerk of the court have been put there not so
6 much because they are judicial functions but because the
7 clerk's office in many counties was the central place in
8 that county and in many instances were the only county offi-
9 ces which were open every day of the week where the people
10 could go and acquire certain licenses and so forth.

11 But today we have put together a completely
12 new judicial system, a part of which is the administration
13 of the clerk's office. We feel today that these many
14 functions which have accumulated and been thrust upon
15 the clerk's office over the years should now be made a
16 part of the county and a county function.

17 I think Judge Henderson alluded to Baltimore
18 City. I would suggest that in Baltimore City we have a
19 court of common pleas whose sole function virtually is
20 to collect for marriage licenses, liquor licenses and
21 these functions could expeditiously be replaced by the

1 City Treasurer's Office and thereby one clerk of the
2 six who are elected in the City of Baltimore should be
3 disposed of.

4 We therefore suggest today is the time to get
5 rid of the many non-judicial functions of the clerk when
6 they properly should be in the county's office and give
7 the courts a full-time clerk who does nothing but adminis-
8 ter the functions of the court on a daily basis.

9 We therefore urge you to support the amendment.

10 THE CHAIRMAN: The Chair will interrupt the de-
11 bate at this point for a few moments to recognize Delegate
12 Freedlander.

13 DELEGATE FREEDLANDER: Mr. Chairman and fellow
14 delegates, four years ago almost at this very hour, the
15 world was shocked and saddened by the news of the death
16 of President John Fitzgerald Kennedy.

17 The death of this vigorous, young leader was a
18 great loss to the forces of democracy around the world.
19 History, the American tradition, and the continuance of
20 the Federal system were his references. He believed in
21 strengthening state governments.

1 It is fitting and proper that we, who seek to
2 forge a new charter of democracy to serve Maryland for the
3 next century, rise for a moment of silence in memory of
4 President Kennedy, the first President of the United
5 States to have been born in this century.

6 THE CHAIRMAN: Governor Tawes.

7 GOVERNOR TAWES: Mr. Chairman and members of
8 this conference, Delegate Freedlander has very effectively
9 reminded us of the tragedy which took the life of President
10 Kennedy four years ago. There is very little I could add
11 to what has already been said. However, I should like to
12 second the motion made by Delegate Freedlander.

13 THE CHAIRMAN: It has been moved and seconded
14 that the Committee of the Whole rise in a moment of respect
15 to the late President Kennedy.

16 All in favor signify by saying Aye. Contrary,
17 No. The Ayes have it. It is so ordered.

18 (The Committee of the Whole arose and observed
19 a moment of silence in memory of John Fitzgerald Kennedy.)

20 THE CHAIRMAN: The Chair recognizes Delegate
21 Mudd.

1 DELEGATE MUDD: I yield three minutes to
2 Delegate Hodge Smith.

3 THE CHAIRMAN: Delegate Smith.

4 DELEGATE H. SMITH: Mr. Chairman and members of
5 the committee: as you probably gathered, this was one of the
6 knottiest problems we wrestled with in the committee. There
7 were a number of conferences and much debate over this thing.

8 It has even divided the Smiths over here in the
9 last row. The institution of judicial administration said
10 that one of the essentials of a sound judicial system was
11 efficient and business-like administration of the courts.

12 The commission adopted the provision that all
13 the clerks and all the courts in the four tiers should
14 appoint their clerks. This is business-like administration.
15 There isn't any question about that.

16 I think that each court should appoint its own
17 clerk, but here we ran headlong into trouble, and probably
18 at the present clerks of the courts' expense, who theoreti-
19 cally, under this direction that each court should appoint
20 its own clerk, would be in the superior court level of
21 each county -- the clerks as we presently know them.

1 You have heard about the heterogeneous duties
2 that the clerks have at this time. There are some 600
3 references in the annotated notes of Maryland as to
4 clerks of court that give them duties from marrying
5 people to issuing passports to even being an arm of the
6 U. S. Government for some purposes such as naturalization
7 purposes.

8 In Montgomery County our clerk employs some
9 70 people. He has testified before our committee that
10 approximately 80 percent of his duties do not refer to the
11 court function and to me and to the bare majority of our
12 committee, it was just unthinkable that the judges should
13 get into appointing a man who has an office of this
14 magnitude.

15 It just doesn't make sense. It is not a judicial
16 function for the court to be appointing a clerk in the
17 county who doesn't spend all his time working for the
18 court.

19 THE CHAIRMAN: You have one-quarter minute.

20 DELEGATE SMITH: The compromise we reached was
21 to leave this up to the legislature. Perhaps a commission

1 should be appointed to study the whole clerk system and
2 come up with the right answers. We had to leave the
3 flexibility, in our humble opinion, to allow this to be
4 worked out both to the satisfaction of the court and the
5 public.

6 Let the people decide how this office is going
7 to be run in the future.

8 THE CHAIRMAN: Delegate Dulany.

9 DELEGATE DULANY: Mr. Chairman, I submit that the
10 judges do not want the function of handling 80 percent
11 of the county's business and I believe that is one
12 reason we have the proposal that he perform the judicial
13 functions and none other.

14 In essence we are saying that the clerk be appoint-
15 ed to perform the judicial functions. I believe the
16 majority report of our committee merely avoids the issue
17 by stating that the court clerk in the superior court
18 would be selected as provided by the legislature.

19 Actually as we know it, the court clerks would
20 probably be continued. The judge of the superior court
21 would probably be deprived in many cases of the services

1 of his clerk because he would be involved in these
2 other duties. The clerk is not a policy-maker. He should
3 not be out shaking hands with everyone in the county as
4 the official greeter.

5 The clerk should be responsible to the judges
6 who would appoint him. We should have an appointive clerk
7 appointed by the superior court judges just as we do
8 in the other courts. It is inconsistent to have all
9 clerks, even the chief clerk, appointed and then have the
10 superior court clerks elected.

11 I would urge that you all vote for the amendment.

12 THE CHAIRMAN: Delegate Mudd.

13 DELEGATE MUDD: Mr. Chairman and ladies and
14 gentlemen: May I observe that this matter has in effect
15 been twice debated. I feel that the facts of the matter
16 have been substantially presented and perhaps re-argued
17 to this committee of the Whole.

18 I do make the final observation that our
19 committee has brought to you the best we can do with
20 a difficult article 5. We have so far enjoyed the support
21 of the majority of the delegates here. We feel that the

1 the recommendation herein contained to leave to the legis-
2 lature the manner of the selection of the clerk of the
3 court in the county with the multitude of duties is the
4 efficient way to handle this phase of our recommendation
5 to this committee.

6 We accordingly ask you to vote against the
7 proposed amendment and in that way sustain the majority
8 report which comes to you, I respectfully suggest, with
9 the presumption of representing the majority view of our
10 committee which has given undue time to this matter.

11 May I release the rest of the controlled time?

12 THE CHAIRMAN: Any other delegate desire to speak?

13 Delegate Singer.

14 DELEGATE SINGER: I have a question of Delegate
15 Dulany.

16 THE CHAIRMAN: Delegate Dulany, will you yield
17 to the question?

18 DELEGATE DULANY: Yes.

19 THE CHAIRMAN: Delegate Singer.

20 DELEGATE SINGER: If your amendment is adopted
21 for a suggestion as to a non-judicial clerk is carried

1 through and his functions are delineated by law, should
2 not the functions or duties of the judicial clerk also be
3 set forth by law to be consistent?

4 THE CHAIRMAN: Delegate Dulany.

5 DELEGATE DULANY: I believe that the judicial
6 administrative duties of the clerk should be as
7 prescribed by rule because I think they are operating
8 under the judges who appoint them. They are part of the
9 judicial system. It may be that there should be some
10 additional functions that would be assigned to them by
11 law. I don't think this would prevent there being assigned
12 some functions by law. It says they do perform duties
13 prescribed by rule but they do still perform duties pre-
14 scribed by law.

15 THE CHAIRMAN: Delegate Singer.

16 DELEGATE SINGER: They could perform duties
17 assigned by law in addition to those assigned to them by
18 court?

19 THE CHAIRMAN: Delegate Dulany.

20 DELEGATE DULANY: That would be my interpretation.

21 THE CHAIRMAN: Any other delegate desire to speak

1 in opposition? Delegate Marion, do you desire to speak
2 in opposition?

3 Delegate Hutchinson, do you desire to speak in
4 opposition?

5 DELEGATE HUTCHINSON: Yes, sir.

6 THE CHAIRMAN: You may proceed.

7 DELEGATE HUTCHINSON: I would like to relate to
8 the question of the story of the clerk of Baltimore County.
9 His name is O. T. Gosnell.

10 He has served for 25 years in the clerk's office
11 of Baltimore County and after the clerk that preceded him
12 was taken out of office for going against the public
13 trust, Mr. Gosnell was appointed to being chief clerk in
14 the circuit court. Then Mr. Gosnell was elected by the
15 people in 1966 who passed judgment upon him and they said
16 yes, the circuit court judges made the right decision. But
17 they too wanted to make the right decision and they elec-
18 ted him to serve as clerk to the court of Baltimore County.

19 Approximately 15 minutes ago I spoke to him on
20 the phone. I asked him what he thought about the appointment
21 or election of the clerk. He said, "You know, chances are

1 I would probably have a better chance of being re-appointed
2 in 1970 than I would have of being re-elected in 1970."

3 He said, however, since the clerks at this time must be sub-
4 servient to the people and the courts are servants to the
5 people and that today we have taken so much away from
6 the people in relation to the courts, he thinks he should
7 be elected.

8 I agree with him, I think we have taken so
9 much away from the people when it comes to the courts
10 in this state that they must be able to touch something.
11 What is more of a servant to the people than the courts
12 of this state?

13 They must pass judgment upon them and we have
14 taken everything away from the people and I think we
15 should let them touch something, and I think the clerk
16 must be that something.

17 THE CHAIRMAN: Delegate Needle.

18 DELEGATE NEEDLE: Mr. Chairman, I think the only
19 justification for electing any official is that he must
20 be a policy-making official. The clerk performs only
21 administrative duties and there is no justification for

1 electing such an official unless you want to make this
2 office a political football and permit an elective clerk
3 to obstruct justice.

4 This is a most inappropriate way to provide a
5 check or balance on the judiciary. We should have appoint-
6 ive clerks at all levels. Because of the heterogenous type
7 of duties is no reason to provide for election. This is the
8 only substantial variance which the judicial committee
9 came out with with regard to the draft of the Constitutional
10 Convention Commission which carefully considered this
11 question.

12 This section had the support of the barest
13 majority of the Judicial Branch Committee and in view of the
14 fact that Delegate Marvin Smith changed his mind, the
15 majority report no longer represents the majority view and
16 I therefore suggest we support the amendment which repre-
17 sents the majority view of the Judicial Branch of the
18 Committee.

19 THE CHAIRMAN: Delegate Child.

20 DELEGATE CHILD: Mr. Chairman, I don't know
21 anything about the larger clerk's offices, and I don't know

1 anything about the smaller clerk's offices because I
2 only have about 40 years experience down there. I didn't
3 know until I came up here that the judges of the court
4 in Worcester County spent most of their time out hunting.

5 But I was very glad to learn that from a
6 delegate from Baltimore City and I will be very glad to
7 convey that information to the people on the Shore, not
8 only as to Worcester County but of the other counties in
9 the first judicial circuit.

10 Now, getting to this amendment, I am certainly
11 against the amendment because it is certainly not
12 a practical amendment. Anyone who has worked in the clerk's
13 office as long as I have, not as an employee, but in
14 searching titles and in various other kinds of work, knows
15 that all of the records must be together.

16 If you have one clerk to attend to the Judicial
17 Branch functions only, then this clerk must attend and
18 record the equity records. He must record the judgment
19 records.

20 Then another clerk under this amendment would
21 be in a different clerk's office with a different set of

1 employees recording deeds, recording mortgages, and so
2 forth, so that a person searching a title would have to go
3 first to one office and then the other, because I submit
4 that anyone who has searched the title, and I certainly
5 presume that some of you lawyers have, you know you must
6 examine the chancery record and the judgment record and
7 the Federal tax record and the mechanic lien record--

8 THE CHAIRMAN: Delegate Child, you have one-
9 quarter minute.

10 DELEGATE CHILD: --all of which are kept. This
11 amendment would set up two clerks offices when only one is
12 necessary. It would have two sets of employees, it would
13 take ten years to unscramble the duties and the records of
14 the two courts.

15 I am against the amendment.

16 THE CHAIRMAN: Is there any other delegate that
17 desires to speak in favor of the amendment?

18 Delegate Murray.

19 DELEGATE MURRAY: Mr. Chairman, I must speak in
20 favor of the amendment and I base it solely upon the
21 experience in my own county, and it is obvious that the

1 situation differs so in other counties that this may
2 affect the vote.

3 As has been stated here, and there is no use taking
4 time to repeat it, the duties of the so-called clerk of the
5 court in my county are endless. I think a time will come
6 and I think this is the logical time to separate those
7 duties, to create truly a clerk of the court who I sug-
8 gest should be appointed and have the county re-establish
9 what it had some years ago, a county clerk.

10 For that reason, I support the minority report.

11 THE CHAIRMAN: Delegate Morgan.

12 DELEGATE MORGAN: Mr. Chairman, I just want
13 to propose a parliamentary inquiry.

14 THE CHAIRMAN: State the inquiry.

15 DELEGATE MORGAN: Would an amendment providing
16 for a county clerk to perform non-judicial functions be
17 an amendment in order for the Judicial branch Article?

18 THE CHAIRMAN: I think the amendment would be
19 in order, but I think the Committee on Style, Drafting and
20 Arrangement when it got it would separate it and put one
21 portion in the Judicial Article and the other portion in

1 the Executive Branch Article.

2 Delegate Johnson.

3 DELEGATE JOHNSON: Mr. Chairman, I wonder if
4 delegates Marvin Smith, John Hargrove and Marion would
5 yield for a quick question?

6 THE CHAIRMAN: Which one do you want?

7 DELEGATE JOHNSON: Well, each.

8 THE CHAIRMAN: You pick them.

9 DELEGATE JOHNSON: Delegate Marvin Smith.

10 THE CHAIRMAN: Delegate Smith, do you yield to
11 a question?

12 DELEGATE M. SMITH: Certainly.

13 THE CHAIRMAN: Delegate Johnson.

14 DELEGATE JOHNSON: I am just a little confused.
15 Didn't you speak in favor of the entire majority report
16 when opposing the previous minority report we just
17 dealt with?

18 DELEGATE M. SMITH: I don't know. I don't know.
19 I had a debate coach in college who said whenever someone
20 says something is always true or never true or everybody
21 believes or nobody believes, you can start looking around

1 because they are wrong.

2 DELEGATE JOHNSON: Do you stand on your previous
3 statements as recorded?

4 THE CHAIRMAN: Delegate Smith.

5 DELEGATE M. SMITH: I think I made myself very
6 clear. I was definitely opposed to the idea of having
7 the district court clerks put into the lap of the General
8 Assembly. I have wrestled with the current situation and
9 I have concluded that what my friend said in the letter
10 which I read correctly states the situation, that the
11 Court should have control of its clerk.

12 THE CHAIRMAN: Delegate Johnson.

13 DELEGATE JOHNSON: Would Delegate Marion yield
14 to a question?

15 THE CHAIRMAN: Would Delegate Marion yield to
16 a question?

17 DELEGATE MARION: Yes, sir.

18 THE CHAIRMAN: Delegate Johnson.

19 DELEGATE JOHNSON: Did you speak in favor of the
20 majority report when opposing the previous minority report
21 when dealing with the amendment we just dealt with?

1 THE CHAIRMAN: Delegate Marion.

2 DELEGATE MARION: I don't think so. I think
3 I spoke against the amendment, and I am in favor with this
4 one. I think my statements as to both are consistent.

5 THE CHAIRMAN: Delegate Johnson.

6 DELEGATE JOHNSON: Would I be correct in finding
7 you stand on both statements and find they are not in-
8 consistent?

9 THE CHAIRMAN: Delegate Marion.

10 DELEGATE MARION: Having stated those statements
11 I feel I am impelled to stand on them.

12 THE CHAIRMAN: Delegate Johnson.

13 DELEGATE JOHNSON: Would Delegate Hargrove yield
14 to a question?

15 THE CHAIRMAN: Delegate Hargrove, would you
16 yield to a question?

17 DELEGATE HARGROVE: Yes.

18 THE CHAIRMAN: Delegate Johnson.

19 DELEGATE JOHNSON: Didn't you speak in favor of
20 the entire majority report with respect to clerks of the
21 court when you opposed the previous minority report

1 recommendation and the amendment previously acted upon?

2 DELEGATE HARGROVE: I don't believe I did. I
3 believe my remarks were limited primarily to the present
4 function of the judges as they relate to the appointment
5 of clerks and I was particularly concerned with the
6 District Court clerks being appointed by the General
7 Assembly.

8 I don't believe I am being inconsistent. I
9 believe our minority report was in long before this.

10 THE CHAIRMAN: Delegate Johnson.

11 DELEGATE JOHNSON: Do you also stand on the
12 previous remarks that you made with respect to opposition
13 to the previous minority report?

14 THE CHAIRMAN: Delegate Hargrove.

15 DELEGATE HARGROVE: I don't think they are in -
16 consistent. I will certainly stand on it.

17 THE CHAIRMAN: Delegate Bothe.

18 DELEGATE BOTHE: I rise to speak in favor of the
19 amendment.

20 I served on the commission, his Judiciary Com-
21 mittee so I cannot claim to have done much soul-searching

1 in reaching the conclusion that the clerks of the Superior
2 Courts should be appointed by the courts and by the judges
3 for whom they will perform judicial functions.

4 However, any doubts I may have had were completely
5 resolved when I read in the papers a report of a hearing
6 before the Judiciary Branch Committee of this body in
7 which I understand it to have been testified by several
8 clerks, not from Baltimore City, that they felt that
9 people would not get fair justice if the clerks were not
10 elected.

11 This statement, if it was made, completely
12 shocked me. Certainly we don't want a bicameral judicial
13 system in this state. Certainly we don't want a situation
14 where a court clerk can say to the judge: the people
15 elected me, you only ran against yourself, so you better
16 let me make this decision.

17 I ask that you vote in favor of the amendment.
18 And leave justice in the hands of the judges.

19 THE CHAIRMAN: Is there any further discussion?
20 Are you ready for the question? (Cries of "Question".)

21 The question arises on the adoption of Amendment

1 No. 55; the Clerk will ring the quorum bell.

2 The question arises on the adoption of Amendment
3 No. 55. A vote Aye is a vote in favor of the amendment,
4 a vote No is a vote against. Cast your vote.

5 Have all the delegates voted? Does any delegate
6 desire to change his vote?

7 The Clerk will record the vote.

8 There being 48 votes in the affirmative and
9 83 in the negative, the motion is lost and the amendment
10 is rejected.

11 Are there any further amendments to Section 5.30?
12 The Chair hears none. Are there any amendments to Section
13 5.31?

14 Mr. Clerk, do you have any amendments?

15 Delegate Johnson, do you still desire to offer
16 your amendment?

17 DELEGATE JOHNSON: Is that with respect to
18 Section 5.31?

19 THE CHAIRMAN: It is.

20 DELEGATE JOHNSON: It is my opinion it is not
21 necessary at this time.

1 THE CHAIRMAN: Thank you, sir.

2 Is there any other amendment in Section 5.31?

3 Delegate Willoner, do you still desire to offer
4 your amendment CO?

5 DELEGATE WILLONER: I do, Mr. Chairman.

6 THE CHAIRMAN: The pages will distribute
7 Amendment CO. This will be Amendment No. 56. The Clerk
8 will read the amendment.

9 MR. QUILLEN: Constitutional Amendment No. 56
10 to Committee Recommendation No. JB-1, by Delegates
11 Willoner and Stern.

12 "On page 10 Section 5.31 Rule-making power, line
13 18, after the period insert the sentence: "However, a rule
14 shall not supersede a law unless at least two years have
15 elapsed since the effective date of the law."

16 THE CHAIRMAN: Amendment 56 having been moved by
17 Delegate Willoner and seconded, the Chair recognizes
18 Delegate Willoner to speak to the amendment.

19 DELEGATE WILLONER: I arise to oppose the ex-
20 clusive rule-making power. I opposed it on a very strong
21 basis. Essentially this amendment goes to the theoretical

1 objection I have to the present Article 5.31 and that is
2 that historically, not in Maryland, but generally speaking,
3 historically the law-making power lies with the representa-
4 tives of the people in the legislature. Under the proposed
5 5.31 it is concurrent power and while this is a departure
6 which is a concept of separation of powers in the State
7 of Maryland, it has in fact in the past worked reasonably
8 well in that the power to make laws by the court, they call
9 it rule-making power, but I think it is law-making power,
10 that this power be divided in the courts and legislature.

11 There is a technical fallacy that has been point-
12 ed out in one of the books that we have received up at
13 Goucher, "The Judicial Process in Maryland", by Dr. Elbert
14 M. Byrd, Jr., where he indicates that there is a "see-saw"
15 objection, theoretical see-saw, and I will read from that:
16 "In theory this "see-saw" appears to be quite possible,
17 although practical and political considerations are likely
18 to prevent its development."

19 It seems to me we should not risk this problem
20 on the hope that practical and political considerations
21 would avoid it. This would not affect it. But where the

1 legislature acts and essentially overrules the rule,
2 the legislature couldn't the next day come in and change the
3 rule and frustrate the will of the people as it comes
4 through their legislature.

5 Also in another study that was prepared by a
6 grant of Columbia University, "Survey of the Judicial
7 System of Maryland", in reference to the rule-making power
8 of Maryland it states: "Ordinarily, rules of court adminis-
9 tration and rules regulating the legal profession aren't
10 dealt with by constitutional provision", as I said before
11 the Court prohibits the parties. "--but left to ordinary
12 legislation and to the exercise of inherent rule making
13 power by the courts over matters of their own special con-
14 cern. Traditionally the courts are given free rein over
15 such matters as the hours for holding court, the times
16 for judges to take vacations, the records to be maintained,
17 and so forth. Nevertheless, there can be a public interest
18 in such matters, so that the legislature should have some
19 redress if courts act unreasonably in this area. The same
20 is true of rules governing the legal profession. Since
21 lawyers are not only officers of the court, but also counsel

1 to their clients, it is not unreasonable that representa-
2 tives of the public in the legislature should have something
3 to say about what persons may be admitted to practice, and
4 what regulations shall govern them."

5 This goes on to recommend the concurrent power in
6 this particular section, but the point that I am trying to
7 get at is this: that the rule-making power of the court
8 should not be superior to the actual legislature and
9 while practically speaking it has not been a problem in
10 the past, and I would applaud the judges that we have in
11 the state of Maryland who have worked these problems
12 out with the legislature, and I would expect that it would
13 continue to occur that way, that it would not be a problem.
14 But should it, then the legislature could solve the prob-
15 lem at least for a period of two years, and this would
16 act as a restraint on the abuse of this rule-making power.

17 THE CHAIRMAN: Delegate Mudd.

18 DELEGATE MUDD: Mr. Chairman and ladies and
19 gentlemen of the committee. I must rise in opposition
20 to this amendment. It seems to me that the arguments
21

1 advanced by the proponents are really the arguments that
2 suggest that his amendment be rejected.

3 He has admitted that the concurrent power in this
4 area as heretofore exercised by the legislature and the
5 courts has worked well. As a matter of fact, the informa-
6 tion before our committee is that it most often works co-
7 operatively, one to supplement the other, or the rule to
8 correct some error in the law or the law to supplement
9 the rule in some respects.

10 We therefore feel that this amendment which
11 suggests a two-year lapse before some such co-operative
12 effort by the courts in clarifying a law or providing a rule
13 which is necessary to supplement the law, would be an
14 unnecessary or unreasonable restriction on the concurrent
15 power and which we feel could not help but in some instances
16 at least bring about a decision.

17 We therefore oppose the amendment.

18 THE CHAIRMAN: Any other delegate desire to speak
19 in favor of the amendment?

20 Any other delegate desire to speak in opposition?

21 Are you ready for the question?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 (Cries of "Question.")

2 THE CHAIRMAN: The Clerk will ring the quorum
3 bell. A vote Aye is a vote in favor of the amendment; a
4 vote No is a vote against. Cast your votes.

5 The question arises on Amendment No. 56. Has
6 every delegate voted? Does any delegate desire to change
7 his vote?

8 The Clerk will record the votes.

9 There being 40 votes in the affirmative and 87
10 in the negative, the motion is lost. The amendment failed.

11 Are there any other amendments to Section 531?
12 The Chair hears none.

13 There are several amendments pending to add sec-
14 tions to the end of the Article. The Chair has hoped
15 very much we would be able to conclude consideration of
16 Committee Recommendation JB-1 this morning but I am afraid
17 consideration of the remaining amendments would consume
18 certainly more than a half-hour. The Chair therefore
19 recognizes Delegate Powers.

20 DELEGATE POWERS: Mr. Chairman, I move that the
21 Committee of the Whole rise and report to the Convention.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 THE CHAIRMAN: The motion has been seconded. All
2 in favor signify by saying Aye; opposed, no. The Ayes
3 have it. It is so ordered.

4 (The mace was replaced by the Sergeant at Arms.)

5 (Whereupon, at 1:00 p.m., the Committee of the
6 Whole rose, and the Convention reconvened.)

7 THE PRESIDENT: On behalf of the Committee of
8 the Whole the Chair reports it has under consideration
9 JB-1 and requests leave for further consideration.

10 Any delegates who are present now who weren't
11 present this morning, please indicate your presence. The
12 Clerk will record the supplemental roll call.

13 Delegate Burgess.

14 DELEGATE BURGESS: My button jumped off.

15 THE CHAIRMAN: Delegate Burgess records himself
16 as being present.

17 Before recognizing Delegate Powers, the Chair
18 desires to inform you that as you have noticed the
19 absence all week of delegates E. T. Miller and Richard F.
20 Cleveland, I have been endeavoring to find out their
21 present condition, and I am sorry to report to you that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 Delegate Miller is not at all well, and I am sure that on
2 behalf of all of us I conveyed to him through Mrs. Miller
3 our warmest regards and best wishes.

4 Delegate Cleveland also is not well. He
5 suffered another injury to his back and I don't know as
6 yet exactly the extent of it.

7 Are there any committee chairmen who have to
8 make announcements before recess? Delegate Mitchell.

9 DELEGATE MITCHELL: I would like to recognize
10 the presence in the right rear gallery of a member of the
11 Bar Association of Scotland whose husband is an intern in
12 the Greater Baltimore Medical Center, Mrs. Derrick Bruce.

13 She is accompanied by my daughter-in-law, Mrs. Kiefer
14 Mitchell whose husband also is an intern in the Greater
15 Baltimore Medical Center.

16 THE PRESIDENT: Glad to have them. (Applause.)

17 The Chair recognizes Delegate Powers.

18 DELEGATE POWERS: Mr. Chairman, I move we
19 recess until 2:30 p.m.

20 (The motion was seconded.)

21 THE PRESIDENT: The Chair recognizes Delegate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 Bard.

2 DELEGATE BARD: I move that we take one hour for
3 lunch today only in order that there might be a greater
4 possibility of completing the afternoon session earlier.

5 THE PRESIDENT: The motion was seconded.

6 The question arises on the motion to amend the
7 motion to adjourn, that we have an hour for lunch, rather
8 than an hour and a half. All in favor of the motion to
9 amend the motion, signify by saying Aye. Contrary, No.

10 The Nos seem to have it. The Nos have it. All
11 in favor of the motion to adjourn signify by saying Aye,
12 contrary No. The Ayes have it. It is so ordered.

13 (Whereupon, at 1:05 p.m., the Convention
14 adjourned, to reconvene at 2:30 p.m. of the same day.)
15
16
17
18
19
20
21

1 THE PRESIDENT: The Sergeant at Arms will clear
2 the aisles and close the doors.

3 The Convention will please come to order.
4 Roll call.

5 (Whereupon, a roll call was taken.)

6 DELEGATE GROH: Mr. President.

7 THE PRESIDENT: For what purpose does Delegate
8 Groh rise?

9 DELEGATE GROH: I rise to a point of personal
10 privilege.

11 THE PRESIDENT: Delegate Groh, please.

12 DELEGATE GROH: I would like to announce that
13 I am proud that my wife and small son are present with
14 us today in the front balcony. Thank you. (Applause.)

15 THE PRESIDENT: The Clerk will record the
16 roll call.

17 There being a quorum present, the Convention
18 is in session.

19 There are still a number of amendments to be
20 considered to the judiciary article and while the Chair
21 sincerely hopes that debate will be very limited, it
will take a little time to consider these amendments,

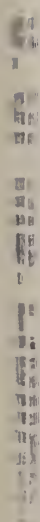
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 including the presentation by the committee chairman and
2 the minority spokesman.

3 This would mean that we would be into the
4 afternoon when we reach the next item on the agenda,
5 consideration of the very important report of the
6 committee on the Executive Branch.

7 It is perfectly obvious that that report cannot
8 be disposed of in the time that would be remaining in
9 the afternoon.

10 It is deemed to be in the best interest of
11 the Convention that if we possibly can, we consider and
12 dispose of that report at one sitting. Therefore, the
13 Chair will not be disposed to call that report for
14 consideration this afternoon, but I hasten to add, lest
15 you entertain thoughts of early adjournment, that we
16 have arranged to dispose of another matter that we think
17 we can dispose of very quickly and I, therefore, ask
18 the chairman of the Committee on Calendar and Agenda to
19 submit for your consideration a minor amendment of the
20 calendar. I think I should add that unless debate is
21 unduly prolonged, I would not anticipate that we would be



1 sitting as late as we customarily do. I think it would
2 be possible to adjourn a little earlier than usual but
3 just how early is up to you. The Chair recognizes Delegate
4 Powers.

5 DELEGATE POWERS: Mr. President, I move that
6 today's calendar and agenda be amendment so as to insert
7 under general orders of the day, after Item A, consider-
8 ation of Committee Recommendation JB-1, the Judiciary
9 Article, that we insert, that immediately thereafter a
10 new item, consideration of Committee Recommendation GP-4,
11 consumer protection.

12 THE PRESIDENT: Is there a second?

13 (The motion was duly seconded.)

14 THE PRESIDENT: All in favor, signify by saying
15 Aye, contrary, No. The Ayes have it. It is so ordered.

16 Committee recommendation LB-2. The Clerk
17 will read the memorandum.

18 MR. QUILLEN: Committee Memorandum LB-2 by
19 the Committee on the Legislative Branch, Francis X.
20 Gallagher, Chairman. A memorandum in support of
21 Committee Recommendation LB-2 that portions of Article III

The first part of the paper discusses the importance of maintaining accurate records of all transactions. It is essential for the business to have a clear and concise record of all income and expenses. This will allow the business to track its financial performance over time and identify areas for improvement. The second part of the paper discusses the importance of maintaining accurate records of all assets and liabilities. This will allow the business to track its net worth over time and identify areas for improvement. The third part of the paper discusses the importance of maintaining accurate records of all debts and obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fourth part of the paper discusses the importance of maintaining accurate records of all taxes and other legal obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fifth part of the paper discusses the importance of maintaining accurate records of all other financial information. This will allow the business to track its financial performance over time and identify areas for improvement.

100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200

1 of the new Constitution dealing with the Legislative
2 Branch provide for substantially equal legislative
3 districts, create an independent commission to recommend
4 redistricting plans to the General Assembly, provide for
5 the filling of vacancies in the General Assembly, and
6 establish legislative procedure, to read as follows:

7 THE PRESIDENT: The memorandum will be
8 received and distributed.

9 The Chair wishes to comment that special
10 efforts have been made to have this memorandum completed,
11 printed and in your hands so that you can consider it
12 before the Committee Recommendation is reached on the
13 agenda.

14 This will be next week and inasmuch as it has
15 been indicated that we will be having night sessions next
16 week, the Chair suggests that the ideal time for you to
17 study this memorandum is this weekend.

18 DELEGATE DORSEY: Mr. President.

19 THE PRESIDENT: Delegate Dorsey.

20 DELEGATE DORSEY: A personal privilege. I
21 see my wife sitting in the gallery with our little dog

University of Maryland
College Park, Md.
Maryland Room
Library

1 Ginger, and I would like to call to the Convention's
2 attention that this is Ginger's fifth birthday.
3 (Applause.)

4 THE PRESIDENT: Delegate E. J. Clarke.

5 DELEGATE E. J. CLARKE: In order that we may
6 celebrate all birthdays together, I would like to call
7 to the attention of the Convention that this is the
8 birthday of my seat mate, Delegate Hal Clagett, who is
9 much younger than I. (Applause.)

10 THE PRESIDENT: Delegate Clagett.

11 DELEGATE CLAGETT: Mr. Chairman, I feel as if
12 I have really gone to the dogs.

13 THE PRESIDENT: Any other announcements?
14 Any motions or resolutions?

15 (There was no response.)

16 THE PRESIDENT: The Chair recognizes Delegate
17 Powers.

18 DELEGATE POWERS: Mr. President, I move the
19 Convention resolve itself into the Committee of the Whole
20 to resume consideration of the general orders of the day.

21 THE PRESIDENT: Second?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 (The motion was duly seconded.)

2 THE PRESIDENT: All in favor, signify by saying
3 Aye; contrary, No. The Ayes have it. It is so ordered.

4 (Whereupon at 2:47 p.m., the Convention resolved
5 itself into the Committee of the Whole.)

6 (The mace was removed by the Sergeant at Arms.)

7 THE CHAIRMAN: The Committee of the whole
8 will please come to order. We are still under part 3 of
9 the debate schedule. Does Delegate Johnson still desire
10 to offer his amendment T?

11 DELEGATE JOHNSON: Yes, Mr. Chairman.

12 THE PRESIDENT: The pages will please distribute
13 the amendment T. This will be Amendment 57. The clerk
14 will read the amendment.

15 MR. QUILLEN: Amendment No. 57 to accompany
16 Minority Report No. JB-1, to committee Recommendation No.
17 JB-1, by Delegates Johnson, Harkness, Hickman, Kahl,
18 Murphy, Siewierski, and Rush. On Page 10 after Section
19 5.31, add the following section: "Section 5__ Right of
20 Removal. There shall be the right of removal in each case
21 before the Superior Court and the District Court in a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 manner prescribed by rule or by law."

2 THE CHAIRMAN: The amendment having been
3 seconded, the Chair recognizes Delegate Johnson.

4 DELEGATE JOHNSON: Mr. Chairman, fellow delegates,
5 in the opinion of the minority, a section should be added
6 to the Judicial Article to insure a right of removal.
7 This right of removal is found in Article 4, Section
8 8 of the present Maryland Constitution, and Rule 5.42
9 of the Maryland Rules of Procedure.

10 In the opinion of the minority deleting, it
11 may suggest an intention to diminish or downgrade this
12 right. As I have indicated previously, eliminating
13 something previously included in a constitution frequently
14 appears to be a stronger action than failing to include
15 something originally.

16 The minority regret any action tending to
17 minimize the importance of the right of removal of
18 litigant and persons accused of crime.

19 We very strongly, Mr. Chairman, therefore,
20 recommend that the Judicial Article contain the section
21 as it appears in the amendment.

1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900

1 May I also take this opportunity to add that a
2 right of removal appears in the majority record of the
3 Committee on Personal Rights and the Preamble. Although it
4 is not official, I understand from some members of that
5 committee that this right of removal would better solve
6 the problems than the right of removal in and under the
7 personal rights and preamble.

8 I assure you, fellow delegates, that this is
9 a very important right and I urge you to give it very
10 deep consideration before eliminating it from our Consti-
11 tution.

12 (At this point, the Honorable William S.
13 James, Second Vice President, assumed the Chair.)

14 DELEGATE JAMES: Does any member wish to speak
15 against the amendment? Delegate Mudd.

16 DELEGATE MUDD: Mr. Chairman, ladies and
17 gentlemen of the committee, Delegate Johnson, the spokes-
18 man for the minority, is entirely correct that there is a
19 section in the present Constitution with respect to right
20 of removal. However, I respectfully suggest that the
21 section to be added to our proposed article 5 in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 language of this amendment is much broader than the
2 provision in the present Constitution, and would apparently
3 have the right of removal to extend to equity cases and
4 all types of cases, which is very much more extensive
5 than under the present system, which in many instances
6 has been found to disrupt docket schedules and work a
7 hardship on litigants and lawyers and the courts as well.

8 It is further correct that the recommendation
9 which will be shortly considered by this Convention of
10 the Committee on Preamble and Personal Rights does contain
11 a section dealing with this right of removal.

12 It was the view of the majority of the Committee
13 on the Judicial Branch that this was a matter which
14 might properly and easily be taken care of by statute or
15 rule, of course, and is not of constitutional stature.
16 If we were wrong in that respect, then it has already
17 been provided for, or this committee will have an
18 opportunity to provide for it in adopting the recommenda-
19 tion of the Committee on the Preamble and Personal Rights.

20 Accordingly, we feel that this amendment should
21 be rejected as mandating in the Constitution and in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 Article 5 an unnecessary addition. I therefore urge you
2 to vote against the amendment.

3 DELEGATE JAMES: Delegate Johnson, we are
4 under controlled time. You have used 1 minute 47 seconds.
5 Do you wish to allocate the time?

6 DELEGATE JOHNSON: Yes. I wonder first if
7 Chairman Mudd would yield for a question?

8 DELEGATE JAMES: Will Chairman Mudd yield?

9 DELEGATE MUDD: Gladly.

10 DELEGATE JOHNSON: If you would insert any
11 amendment -- do you have the amendment before you?

12 DELEGATE MUDD: Yes, sir.

13 DELEGATE JOHNSON: If/^{we}were to insert in the
14 amendment on Line 5 that there shall be a right of
15 removal in each "law" case, would you agree that this
16 would be a mandate to the Court of Appeals and to the
17 legislature to provide a similar removal section as is
18 provided under the rule section, so that it would not
19 apply to equity cases?

20 DELEGATE MUDD: How about criminal cases?

21 DELEGATE JOHNSON: We could say law and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 criminal cases.

2 DELEGATE MUDD: Would it then include
3 condemnation cases or not?

4 DELEGATE JOHNSON: I don't believe so.

5 DELEGATE MUDD: I have forgotten -- would I
6 concur in the amendment then? No. I would not. I
7 don't think it is necessary to be in Article 5 in the
8 Constitution. I think that would be the answer.

9 DELEGATE JOHNSON: Does the chairman feel the
10 right of removal should be anywhere in the Constitution?

11 DELEGATE MUDD: No.

12 DELEGATE JOHNSON: Why?

13 DELEGATE MUDD: Because I think it is the right
14 that can be provided by statute or by rule.

15 DELEGATE JOHNSON: Suppose it isn't?

16 DELEGATE MUDD: Then I feel that the voters
17 have been unable to impress their representatives here
18 in Annapolis with the urgency of such a right.

19 DELEGATE JOHNSON: Mr. Chairman, I yield what-
20 ever other time is remaining to Delegate Kiefer.

21 DELEGATE JAMES: Delegate Kiefer.

6
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 DELEGATE KIEFER: How much time is there, sir?

2 DELEGATE JAMES: Two and a half minutes.

3 DELEGATE KIEFER: Mr. Chairman.

4 DELEGATE JAMES: For what purpose does

5 Delegate Sherbow rise?

6 DELEGATE SHERBOW: I would like to address a
7 question to Chairman Mudd, which may solve some of these
8 problems.

9 DELEGATE JAMES: Will Delegate Johnson yield the
10 floor?

11 DELEGATE JOHNSON: Do I yield the floor, yes,
12 of course.

13 DELEGATE SHERBOW: Isn't it true that it is
14 inherent in our judicial system that if a man cannot
15 receive a fair trial in the jurisdiction where the case
16 is being heard, that the court on proper motion may
17 provide for a change of venue in order to observe the due
18 process requirement, and that this not only can be done
19 by law or by rule but also it is inherent in our law?

20 DELEGATE MUDD: Absolutely, under circumstances
21 which would appeal to the court as preventing a fair and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 impartial trial within that jurisdiction.

2 DELEGATE JAMES: Delegate Kiefer.

3 DELEGATE KIEFER: Mr. Chairman, we are in a
4 rather strange situation here. The present Constitution
5 provides for a removal in not only law cases, but in
6 equity cases. This may sound strange to you, and nobody
7 ever seems to have heard of it having been done, but
8 even Judge Child didn't know that. Goodness knows, I
9 didn't. We looked it up and this is a fact, that now in
10 the Constitution there is a right of removal in equity
11 cases.

12 I am constrained to agree with you, Chairman
13 Mudd, in that these are matters that could be handled by
14 court rule or by statute. However, there is a strong
15 feeling on the Committee of Personal Rights and Preamble
16 that if this is not or some right is not included in the
17 Constitution, and the court has no restraints constitu-
18 tionally, that the Court of Appeals' rules will promptly
19 abolish the right to removal. Whether this is good, bad,
20 indifferent, right or wrong, I am not prepared to say.
21 I only say that this is the feeling apparently of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 Committee on Personal Rights and Preamble. Therefore,
2 it has been included in Recommendation No. 2, which is
3 not to be included in the Declaration of Rights, but
4 perhaps ought to be considered or put in some other
5 part of the Constitution.

6 I don't think an inalienable right exists to
7 remove, Judge Sherbow. If it is and this is cured, that
8 is fine. I simply call this to your attention and believe
9 that the detail that is set forth in the recommendations
10 of Sections 8 and 10, or 12, of the Recommendation No.
11 2, are far more so than are necessary. They may go further
12 than they should. Section 8, which is the right of
13 removal in civil cases exactly duplicates what is presently
14 in the Constitution. Section 12 goes a step further and
15 will allow removal as a right in any felony case, while
16 now it is restricted to capital and life imprisonment
17 cases. However, I would feel that if the right were
18 insured in the Constitution, the details would be better
19 left to the Legislature or the rules of the court and this
20 is why I personally rise to support this amendment,
21 because it is less odious in that it sets out fewer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 details, so if we could be assured there would be a
2 right of removal preserved in the rules of the court or by
3 statute, I think possibly the whole thing could be
4 dropped, but we have no such assurance at this point.

5 DELEGATE JAMES: Delegate Johnson, have you
6 modified your amendment or are you presenting it in the
7 original form?

8 DELEGATE JOHNSON: Presenting it in the
9 original form, Mr. Chairman, because Delegate Kiefer
10 correctly reminded me that, although the language in our
11 present Constitution is at best confusing with respect to
12 the right of removal, it does in fact imply that there
13 shall be a right of removal in equity cases, and I
14 feel certain that if we leave this matter to the legisla-
15 ture and to the Court of Appeals, that a proper solution
16 will arise or will be arrived at. I think it is terribly
17 important that we spell out in the Constitution that the
18 citizens of this state will be entitled to some right of
19 removal, and for that reason I do not amend our original
20 amendment.

21 DELEGATE JAMES: Does Delegate Macdonald wish

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 to speak against the amendment or for the amendment?

2 DELEGATE MACDONALD: I do, Mr. Chairman,
3 against.

4 DELEGATE JAMES: The Chair recognizes Delegate
5 Macdonald.

6 DELEGATE MACDONALD: Fellow delegates, please
7 don't adopt this amendment. This would be the greatest
8 step backward that this Convention has taken to date.
9 Right at the present time there is an unqualified right
10 of removal in the constitution, and it is used as a process
11 for delay, it is used all the time, it is a gimmick, and
12 it is one of the worst things we have in the Constitution.
13 This matter can be taken care of by the rule of the
14 Court of Appeals, but do not put it in the Constitution.
15 Hundreds and thousands of cases in Maryland are delayed
16 by utilizing this gimmick, and that is what it is. All
17 a person has to do at the present time is to file an
18 affidavit of removal the morning of trial and then the
19 case must be removed to another county.

20 DELEGATE JAMES: Delegate Chabot.

21 DELEGATE CHABOT: Will Delegate Johnson yield

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 for a question?

2 DELEGATE JAMES: Does Delegate Johnson yield?

3 DELEGATE JOHNSON: Gladly.

4 DELEGATE CHABOT: As I read the amendment before
5 us, the only thing that is left to rule or to law is the
6 manner in which one exercises his right to remove. Do
7 I understand correctly that the fact that one will have
8 an opportunity to remove will now exist in every single
9 case?

10 DELEGATE JOHNSON: The purpose of this amend-
11 ment is to preserve the right of removal. We do not
12 imply by this right that it will be misused. We are
13 deeply concerned about the fact that if we remove it from
14 the Constitution, there will be no right of removal under
15 this exclusive, unified judicial court system that we
16 have. We think that the details can be and will be worked
17 out by the legislature and the Court of Appeals and for
18 that reason, we feel strongly that a litigant in a manner
19 that is personal and important to him should have that
20 right, that single right of removing his case.

21 DELEGATE CHABOT: Will the delegate yield

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 for a further question?

2 DELEGATE JAMES: Do you yield?

3 DELEGATE JOHNSON: Yes.

4 DELEGATE CHABOT: Would you be agreeable to
5 saying that Line 7 would read, in a manner and under the
6 circumstances prescribed by rules or by law?

7 DELEGATE JOHNSON: Yes.

8 DELEGATE JAMES: Do you wish that modification?

9 DELEGATE JOHNSON: I would be very happy to,
10 if that will clarify the matter.

11 DELEGATE JAMES: Is there any objection to
12 the modification? The modification would be, insert after
13 the word "manner," on Line 7, and under the circumstances;
14 is that correct? Line 7 would now read, Line 6 and
15 7, "The district court in a manner and under circumstances
16 prescribed by rule or by law.

17 DELEGATE DORSEY: Mr. President, on Line 5
18 if you struck out the word "each" and added, "s", to
19 case, making it the plural, cases, wouldn't that take
20 care of the situation, it shall be the right of removal
21 in cases before the superior court and district court in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 a manner prescribed by rule or by law.

2 DELEGATE JAMES: Does Delegate Johnson wish to
3 make that modification?

4 DELEGATE JOHNSON: I will be glad to accept
5 it.

6 DELEGATE JAMES: If there is no objection, we
7 will strike out the word "case" and make cases plural, so
8 it would read, "removal of cases before the Superior
9 and District Court in a manner and under the circumstances
10 prescribed by rule and by law."

11 For what purpose does the delegate rise?

12 DELEGATE HARDWICKE: Mr. Chairman, I have a
13 question of the proposer of the amendment to the
14 amendment, in order to determine how far he intends the
15 reach of this amendment to go.

16 DELEGATE JAMES: Does Delegate Chabot yield?

17 DELEGATE CHABOT: Certainly.

18 DELEGATE HARDWICKE: Is it your intention,
19 Delegate Chabor, that by rule or by law this right would
20 not exist, say, in condemnation cases, or in equity cases?
21 In other words, is it your intention that the rule of

1

100

100

100

100

100

100

100

100

100

1 the court, or the act of the legislature prohibit the right
2 with regard to certain types or categories of cases?

3 DELEGATE CHABOT: I think that that could
4 be the consequence. I think that the safeguard in there
5 is that either rule or law can operate to effectuate
6 this right, and since Delegate Kiefer had indicated that
7 the problem with leaving the matter up to the courts
8 alone -- that the problem that he envisioned resulted
9 only from leaving the matter up to the courts alone, that
10 this would provide sufficient safeguards.

11 DELEGATE JAMES: Delegate Hardwicke.

12 DELEGATE HARDWICKE: Will Delegate Chabot
13 yield for another question?

14 DELEGATE JAMES: Does he yield?

15 DELEGATE CHABOT: Yes.

16 DELEGATE HARDWICKE: It is your intention
17 the legislature could not only implement the right but
18 also restrict the right?

19 DELEGATE CHABOT: It could. However, we must
20 not overlook the fact that there is stated the mandatory
21 word, that there shall be the right; that the legislature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 has to act responsibly, I think, in granting the right,
2 as widely as it would seem there is any appropriateness
3 in the right.

4 DELEGATE JAMES: Delegate Hardwicke.

5 DELEGATE HARDWICKE: Then you do not intend
6 by the added phraseology under the circumstances that the
7 right can be restricted, since you say it is an absolute
8 right? You must not intend it could be restricted by
9 the legislature or by the rule.

10 DELEGATE CHABOT: I didn't use the word
11 "absolute." I think that there is just about nothing here
12 as to an absolute right. I indicated that this is a
13 mandatory word, at least as I read it. Obviously I did
14 not prepare the amendment or participate in the preparation.
15 I think that the effect of the amendment, with the changes
16 that have been accepted by Delegate Johnson, both my
17 change and Delegate Della's change, would be to impose an
18 obligation on the General Assembly and the court to imple-
19 ment this right, to the extent that it can practicably be
20 implemented.

21 DELEGATE JAMES: Delegate Hardwicke.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 DELEGATE HARDWICKE: Unless Delegate Chabot
2 can say something in addition to this, I am at a total
3 loss to understand what his phrase means.

4 DELEGATE JAMES: Does anyone wish to speak in
5 favor of the amendment?

6 Does anyone wish to speak against the amendment?
7 Delegate Powers.

8 DELEGATE POWERS: May I address a question to
9 the sponsor of the amendment, Delegate Johnson?

10 DELEGATE JAMES: Does Delegate Johnson yield?

11 DELEGATE JOHNSON: Yes.

12 DELEGATE POWERS: Delegate Johnson, is it
13 contemplated in this amendment that the rules provide
14 for any safeguards against abuse of the right of removal?

15 DELEGATE JOHNSON: Yes, I think that it could.
16 If we leave the manner and under the circumstances to the
17 rules, then to the Court of Appeals, Delegate Powers,
18 I fully expect and hope that we will have a similar
19 removal provision as we have under Rule 5.42.

20 DELEGATE JAMES: Delegate Powers.

21 DELEGATE POWERS: Mr. President, I would like

6
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 to speak against the amendment briefly.

2 This absolute right of removal has been in
3 and out of the Constitution about six times in the history
4 of this state. Every time it went out it went out be-
5 cause it was abused. At the present time, according to
6 much more experienced judges than I am, the use of this
7 device is abused about 99 times for every time that it is
8 legitimately used.

9 It doesn't make any difference, particularly
10 to the judge in the case, because he goes on to the next
11 case.

12 I am not even speaking on behalf of the
13 lawyers who are victimized by this, but litigants could
14 be readily and emotionally involved over a trial and
15 finally the day comes up, they are there; they have
16 their witnesses; they pay for the docket to be there and
17 the attorney on the other side in order to wear them down
18 to a lower settlement than they should receive, can
19 immediately start using a threat that he will file an
20 affidavit of removal. The second he does that, off they
21 go to some county, 20, 30, 40, 50, 60 or a hundred miles

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 away away and the case is delayed several more weeks,
2 and there is certainly several weeks --

3 DELEGATE JAMES: Months usually.

4 DELEGATE POWERS: Weeks, months, sometimes
5 years. Certainly if there is going to be anything about
6 removal, there should be safeguards against that, and
7 the language in this present amendment I would still
8 be afraid of. This is purely on behalf of innocent
9 litigants who are victimized by this, as Delegate Macdonald
10 says, hundreds of times a year, and thousands of times for
11 every time that something legitimately does it. In
12 addition to that in noncapital criminal cases, the right
13 of removal is not absolute, and it is very rarely involved
14 but when it is revoked, the right of removal at the
15 request of the court is almost always granted. I am
16 very much against this amendment and doing anything that
17 would cause the condition that now exists in this state
18 to continue.

19 DELEGATE JAMES: Delegate Dukes.

20 DELEGATE DUKES: Would Delegate Johnson yield?

21 DELEGATE JAMES: Delegate Johnson, do you

1

2

3

4

1 yield?

2 DELEGATE JOHNSON: Yes.

3 DELEGATE DUKES: As I understand the new court
4 system that has been adopted, there are no separate courts
5 in the sense of county to county. There is only one
6 Superior Court and one district court and therefore it
7 seems to me that under the amendment removal would be
8 from only one judge to another, not necessarily from one
9 county to another, would it not?

10 DELEGATE JOHNSON: This would and could be
11 provided by rule. It could be it could be removed, and
12 I trust the legislature and the Court of Appeals to work
13 this out.

14 DELEGATE DUKES: What is the intention?

15 DELEGATE JOHNSON: The intention, contrary to
16 what Delegate Powers has said, the intention is simply
17 this: Admittedly there are some abuses in this system,
18 but one day I predict that each and every delegate in
19 this Convention will come before a judge, who, because of
20 a personality conflict or because of an arbitrary
21 attitude or because of coming before an arbitrary jury,

100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200

1 will be left with no other will be left with no other
2 alternative whatsoever, none, I submit, than to try
3 his case before that judge or jury when he knows, when
4 he or she knows deep down in their heart that they are
5 not going to get a fair trial, and I say that when a
6 matter is important to a litigant, that important that
7 he takes that matter to court, you had better give him at
8 least one right of removal.

9 DELEGATE JAMES: Delegate Dukes.

10 DELEGATE DUKES: Perhaps I could make my
11 question more direct. Would I be correct in the assumption
12 that a removal filed in Prince Georges County would not
13 necessitate under the concept of the single Superior
14 Court that the case be removed from Prince Georges County
15 but that it simply be removed from the judge before whom
16 it was scheduled.

17 DELEGATE JOHNSON: That is correct, this could
18 be the case under this amendment.

19 DELEGATE DUKES: Still heard in Prince Georges
20 County however?

21 DELEGATE JOHNSON: Yes, it could still be heard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 in the same county.

2 DELEGATE JAMES: Does anyone wish to speak in
3 favor of the amendment?

4 Delegate Chabot.

5 DELEGATE CHABOT: For just a moment, sir.
6 It seems to me that all of the qualms that have been
7 indicated by the various delegates presume that the Court
8 of Appeals and the General Assembly are going to conspire
9 to create an impossible situation. They are going to
10 conspire either to completely eliminate the right, or to
11 set it up in such a way that abuse is more characteristic
12 of it than use.

13 We have had a great deal of debate as to
14 whether under some circumstances we can trust the courts,
15 whether under other circumstances we can trust the
16 General Assembly. This is, I believe, the first time
17 in the last few days at least that there has been a
18 serious insistence here that in this particular area
19 above all others we can trust neither the courts nor the
20 General Assembly. I suggest you vote for the amendment.

21 DELEGATE JAMES: Does Delegate Willoner wish to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1 speak against the amendment?

2 (There was no response.)

3 DELEGATE JAMES: Does anyone wish to speak against
4 the amendment? Delegate Kirkland.

5 DELEGATE KIRKLAND: Mr. President, may I ask
6 Delegate Mudd a question?

7 DELEGATE JAMES: Does Delegate Mudd yield?

8 DELEGATE MUDD: Yes, Mr. Chairman.

9 DELEGATE KIRKLAND: Delegate Mudd, would such
10 an amendment as this help the people? Would there be
11 a benefit to them?

12 DELEGATE MUDD: In some rare instances, I
13 think it would help unprepared attorneys more.

14 DELEGATE KIRKLAND: But it would help the
15 people, is this correct?

16 DELEGATE MUDD: In a rare instance it might.

17 DELEGATE KIRKLAND: Thank you, sir.

18 DELEGATE JAMES: Anyone wish to speak against
19 the amendment? The Chair recognizes Delegate Child.

20 DELEGATE CHILD: Mr. Chairman, I am in favor
21 of a removal, and I think that such provision should be

1 in the Constitution.

2 I am against this amendment on account of its
3 language. As I see the amendment, it applies to every
4 case. It says, in cases.

5 Now, that language to me means in every case.
6 If so, it applies to every traffic case, every assault
7 and battery case, every possible minor criminal case,
8 every civil case, every equity case, and when you get on
9 the Superior Court level, every criminal case up there.

10 We have in the Constitution now what I consider
11 is the proper matter of removal. It applies in all
12 civil cases where a proper affidavit is made; that you
13 cannot get a fair and impartial trial. It applies to
14 capital cases and criminal cases as an absolute right;
15 in other criminal cases where you can show the court that
16 there is prejudice in the neighborhood, the court will
17 remove.

18 It does not apply in condemnation cases. I
19 think I am correct when I say that it doesn't apply in
20 mandamus cases.

21 I am for the law as it now is. I am afraid of

1 this amendment because it applies to every case and I am
2 not in favor of a right of removal in every case because
3 it would create an ultimate amount of confusion and delay
4 which there is enough confusion and enough delay in the
5 courts as they are now.

6 DELEGATE JAMES: A point of inquiry to Delegate
7 Johnson. Does this include appellate cases, where the
8 Superior Court would be exercising appellate jurisdiction?

9 DELEGATE JOHNSON: No, Mr. Chairman. It
10 specifically includes only the Superior Court and the
11 District Court.

12 DELEGATE JAMES: Does anyone wish to speak in
13 favor of the amendment? Delegate Johnson?

14 DELEGATE JOHNSON: I just missed your comment,
15 Mr. Chairman. Did you make a comment?

16 DELEGATE JAMES: I said I was a little in
17 doubt, as to where you have an appeal from administrative
18 tribunal to the Superior Court where the Superior Court
19 would be exercising appellate jurisdiction. For what
20 purpose does Delegate Dukes rise?

21 DELEGATE DUKES: To speak in favor of the

1 amendment.

2 DELEGATE JAMES: The delegate may proceed.

3 DELEGATE DUKES: Mr. Chairman, there is no
4 question, I suppose, in the minds of any lawyer who
5 practices to any degree before the courts of the state
6 that the right of refusal is used from time to time.
7 I agree with Judge Powers, it is abused far more than it
8 is used correctly. I cannot recall that I have ever filed
9 an affidavit of removal in a civil case, except once,
10 and that time the other lawyer took weeks before the
11 trial. I can think of ten or twelve times it has been
12 used the morning of the trial. Nevertheless the right
13 is very important. It gives a chance for the client,
14 for the party bringing suit, not to have his case heard
15 before the judge who he feels would be partial, rather,
16 prejudiced.

17 Now, it is not always a question of whether or
18 not the judge wants to be prejudiced. It is very important
19 to my mind that clients not have their cases heard
20 before a prejudiced court. The issues should be
21 presented to the judge and have him rule on it. The

1 problem is to present the issues and the judge may remove
2 himself. The fact is no judge I know of ever bothers
3 to force a person to sustain his affidavit.

4 DELEGATE JAMES: Delegate Dukes, I am afraid
5 your time has expired.

6 DELEGATE DUKES: I don't think the right is
7 worth the cause.

8 DELEGATE JAMES: I think the ten minute time
9 on debate has expired.

10 I think the chair can stretch the rule for
11 30 seconds.

12 DELEGATE KOSS: Mr. Chairman, I wanted to just
13 ask a question, and that was if somebody would please
14 direct me, what section of the present Constitution
15 provided for this right?

16 DELEGATE JAMES: Will Delegate Kiefer give
17 her that information?

18 DELEGATE KIEFER: Yes, Article 4, Section 8.
19 You will find it on Page 342 of your blue book, your bound
20 book.

21 DELEGATE JAMES: Are you now ready for the

1 question, a vote on Amendment 57? For what purpose
2 does Delegate Weidemeyer rise?

3 DELEGATE WEIDEMEYER: Mr. President, I
4 wanted to ask Delegate Johnson if in view of the fact
5 that Personal Rights and Preamble has a specific recommenda-
6 tion on this matter, and when our report comes up, everyone
7 will have ample opportunity to study it and come in with
8 any amendments and suggestions or changes and corrections
9 as they might have, it is rather difficult for us at this
10 time to get amendments to amendments, to correct all
11 possible objections, and I am just wondering if Delegate
12 Johnson, without considering any defeat in any way on
13 this matter, would withdraw it and then come in with
14 amendments to the recommendation of Personal Rights and
15 Preamble when that comes up, and I think then we can
16 better consider it by amendments to that, rather than
17 with hurried amendments to the amendment that he has
18 brought in today.

19 DELEGATE JAMES: Will Delegate Johnson yield
20 to that question?

21 DELEGATE JOHNSON: Mr. Chairman and Delegate

1 Weidemeyer, in spite of the fact that I was given to
2 understand that our amendment was a better answer to the
3 problem than that which has thus far been prepared by
4 the Personal Rights and the Preamble, but if there is
5 confusion in the mind of the delegate, and I might also
6 add that apparently a number of the members on the
7 Personal Rights and Preamble Committee feel that this
8 matter should rightfully be in the Judicial Article and
9 not in the Personal Rights, but if it will be an aid to
10 the delegates to this Convention, I would be willing to
11 withdraw the amendment at this time, although I frankly
12 feel that the amendment properly belongs in the
13 Constitution and properly belongs in the Judicial Article,
14 but with the suggestion from you, and apparently the
15 agreement by Delegate Kiefer, the Chairman of that
16 committee that maybe something else could be worked out
17 at a later date, I will withdraw this with the assurance
18 that at a later time I will either introduce it again or
19 amend whatever section pertaining to right of removal
20 comes before this body.

21 DELEGATE JAMES: If there are no objections

1 to the withdrawal the amendment is withdrawn.

2 For what purpose does Delegate Sherbow rise?

3 DELEGATE SHERBOW: Personal privilege.

4 DELEGATE JAMES: The delegate may proceed.

5 DELEGATE SHERBOW: I hate as an ex-judge to
6 be accused of any partiality, and as a grandfather of
7 twelve, I assure you I don't want to be accused of any
8 partiality, but it so happens that four of my grandchildren
9 are in the gallery, Julie, Jill, Mollie and Mitchell,
10 and I would like us all to welcome them. (Applause.)

11 DELEGATE JAMES: The next amendment is
12 Amendment No. 58, presented by Delegate Stern and Willoner.
13 Do you all have copies of the amendment? I will ask the
14 Clerk to read the amendment.

15 MR. QUILLEN: Amendment No. 58, to Committee
16 Recommendation No. JB-1, by Delegates Stern and
17 Willoner. On Page 10 after Section 5.31, add the following
18 new section:

19 "Section 5. _____ Written and Published Opinions.
20 The Court of Appeals and the Intermediate Appellate Court
21 shall file a written opinion in every case. They shall

1 also provide for the publication of such opinions."

2 DELEGATE JAMES: This is marked AG, on the top
3 of your amendment. The chair recognizes Delegate Stern.

4 DELEGATE STERN: This amendment serves one
5 purpose. It mandates the Appellate Courts to deliver
6 written opinions and that the opinions be published.
7 Written opinions have been mandated by the Constitution
8 since 1851 and publications have been allowed since that
9 year.

10 It is obvious to lawyers here that what effect
11 it will have on opinions delivered by the courts orally
12 and are not reduced to writing but are left for publica-
13 tion by the court. This amendment gives greater flexibility
14 to the courts than what is in the present Constitution,
15 which is a mandate for a written opinion within three
16 months. It would appear that technical cases now coming
17 before our courts would come in the future, such as tax,
18 finance cases, or technical improvement cases, could last
19 longer than the three-month period that would be man-
20 dated. However, we ask only that the opinion be reduced
21 to writing.

1 Secondly as to publication. Here again it
2 states that they shall also provide for publication of
3 such opinions. This is a little more liberal than the
4 current constitution, which specifically requires that
5 they be put in the reports.

6 Now, we don't ask for it here to be specifically
7 put in the reports; just that they make arrangements for
8 some sort of publication.

9 The Special Court of Appeals by its rules
10 arbitrarily chooses what cases shall or shall not be
11 published. I have here in my hand over 20 cases that
12 the courts have given opinions on and have marked either
13 not for publication and later change in terminology, or
14 unreported. Going through twenty that I picked up, I
15 found four cases which I feel should have been published.
16 One case is a complete new law in the State of Maryland.
17 There are no cases reported anywhere on it but it is
18 marked, not for publication.

19 I am told by the State's Attorney in
20 Baltimore City, who is President of the State's Attorneys
21 Association, that he has gathered more than one hundred

1 cases from the Special Court of Appeals, made copies of
2 them and submitted them to his members. It is obvious he
3 puts all defense attorneys at a sharp disadvantage. It
4 also puts defense attorneys at a disadvantage when they
5 go before the Special Court of Appeals because the
6 Attorney General, as the attorney of record in every
7 criminal case, receives every case of the court. There-
8 fore, when I or you go before the court and have your case
9 heard, the man opposing you, the Attorney General, has
10 had the benefit of every case that the Court has had
11 where you have not. It may well have been just the day
12 before, the week before, last month, an identical case
13 came up, marked unpublished, was presented before the
14 court and the opinion came out unpublished and the
15 Attorney General knows this, knows what the court's
16 feelings are in this matter and you are at a disadvantage.

17 Now, I know some of the objections to publishing
18 all the cases would be that we would run out of room.
19 However, I think it would be far better to run out of
20 library space, but all the attorneys would have the
21 advantage, all attorneys in the state would have the

1 advantage of knowing what opinions are coming out of the
2 courts and not just restrict it to the State's Attorney
3 and the Attorney General.

4 DELEGATE JAMES: Chairman Mudd.

5 DELEGATE MUDD: Mr. Chairman and ladies and
6 gentlemen of the committee, I rise in opposition to this
7 amendment.

8 I readily admit and agree that the proponent
9 of the amendment has an arguable point and he has discussed
10 the matter with me and I am personally sympathetic with
11 the problem. However, I do not believe that it is necessary
12 to try to correct this, as well as some other minor
13 problems in the Constitution.

14 The pertinent provision of the present
15 Constitution is that provision shall be made by law for
16 publishing reports of court orders, the court of the term
17 of appeals and intermediate court of appeals, which the
18 judges thereof respectively shall judge as proper for
19 publication.

20 The proposed amendment of course goes much
21 further than the present constitutional provision and is

1 designed to make obligatory that all opinions, however
2 inconsequential and of no new matter be published.

3 We feel that this is not a matter that
4 warrants constitutional stature and sympathetic as we
5 are with the problems posed by this amendment, we do
6 believe it can be accomplished much easier than adding
7 this new section to the judicial article, and I therefore
8 oppose the amendment.

9 DELEGATE JAMES: Delegate Willoner.

10 DELEGATE WILLONER: Mr. Chairman, while I
11 agree with Mr. Mudd, that was a 1966 amendment giving
12 the Court of Appeals the discretion whether or not to
13 publish, whether or not to publish the opinions, it was
14 in the 1951 constitution that carried over in the succeeding
15 constitutions, and as a result, we have written published
16 opinions of the Court of Appeals.

17 In 1966, they changed that and in 1966 and
18 1967, we don't have the published opinions of the
19 Intermediate Court of Appeals. I frankly don't know
20 anything that the Court of Appeals has failed to publish.
21 The point simply seems to be that if we don't provide this
in the Constitution, they won't be published. It is a

1 a very simple questions and I think the Convention ought
2 to answer it affirmatively.

3 (At this point, the Honorable H. Vernon Eney,
4 Chairman of the Committee of the Whole, again assumed the
5 Chair.)

6 THE CHAIRMAN: Delegate Marvin Smith.

7 DELEGATE MARVIN SMITH: May I suggest to my
8 brother here, Mr. Chairman, that actually the 1966 amend-
9 ment simply made provision for the Court of Special
10 Appeals. Prior to 1966 the provision read, provision shall
11 be made by law for publishing a report of all causes
12 argued and determined by the Court of Appeals, which the
13 judges shall designate as proper for publication.

14 You know, sir, and I know, sir, that for
15 many years it was customary on the part of the court
16 to designate a number of cases not to be reported, and
17 such was the case up until some ten or fifteen years ago.
18 I submit to you, sir, that this is not a matter of the
19 Constitution but a matter for the General Assembly and
20 the Bar Association.

21 THE CHAIRMAN: Is there any further discussion?

1 Delegate Case?

2 DELEGATE CASE: Mr. Chairman, ladies and
3 gentlemen of the committee, since the focus of this argu-
4 ment has been placed on the Court of Special Appeals,
5 and because I had made some part in the creation of that
6 court, I should like to perhaps neither speak for nor
7 against the amendment but to set the record straight and
8 tell you exactly what the facts are.

9 It is true that the Court of Special Appeals
10 did not publish a number of its opinions in the past.
11 The reason for this was that the cases that come before
12 that court, as you all know, are all criminal cases, and
13 these cases generally speaking are what we lawyers call
14 fact cases. That is to say, they involve no new and novel
15 question of law, but only questions of fact.

16 At the outset, the judges of that court, with
17 the idea of saving the state money, did not publish some
18 of these opinions, because they felt they were merely
19 fact cases that didn't add anything to the lexicon of
20 Maryland law.

21 Complaints were lodged with the court, and

1 just as the sponsor of this amendment has suggested, the
2 State's Attorney of Baltimore City got all of the
3 opinions, the Attorney General got all of the opinions
4 and there were some people who came before that court who
5 felt that they were at a disadvantage. When this
6 point was made known to the Court of Special Appeals, they
7 have adopted a rule whereby all of the opinions of that
8 court, I am told, will be published in the future.
9 This seems to indicate to me that the matter can be
10 brought to the attention of the court, and that it can be
11 corrected by rule.

12 THE CHAIRMAN: Is there any further discussion?
13 Delegate Stern?

14 DELEGATE STERN: I would like to comment on
15 Mr. Case's remarks, that in his presentation to the
16 Bar Association, of which he was then Chairman, it states
17 that, under Section G, the Judge of the Court of Appeals
18 should be required to write an opinion in every case and
19 present it to the Court and such opinion should be
20 published. If this is what Mr. Case presented, we have
21 heard from him and from others that this same thing was

1 brought before the Bar Association and voted on unanimously
2 at the time. However, it is the same language as he
3 presented then there. It is the written fact also. We
4 are not just talking publication, but this amendment also
5 goes back to 1851, in the Constitution, mandating the
6 court to have written opinions on everything they state.
7 Obviously to date the rules have been inadequate. The
8 court now realizes and is making changes slowly. We
9 still have sufficient flexibility in this amendment for
10 the court to do what they wish as to publication, or
11 mandating the written opinion and I urge you to vote for
12 it.

13 THE CHAIRMAN: Is there further discussion?
14 Delegate Byrnes?

15 DELEGATE BYRNES: Mr. Chairman, I would like
16 to direct a question to Delegate Stern.

17 THE CHAIRMAN: Delegate Stern, do you yield
18 to a question?

19 DELEGATE STERN: Certainly.

20 THE CHAIRMAN: Delegate Byrnes.

21 DELEGATE BYRNES: Just in response to your last

1 comment, he said that the mandate goes to the first
2 sentence but not to the second and the first sentence
3 reads, they shall file their written opinion in every
4 case. They also shall provide for publication of such
5 opinion.

6 I would imagine such means the written opinion
7 in every case. I am not sure they have the flexibility
8 that you suggest.

9 THE CHAIRMAN: What is your question, Delegate
10 Byrnes?

11 DELEGATE BYRNES: Do they have the flexibility
12 you suggest?

13 THE CHAIRMAN: Delegate Stern.

14 DELEGATE STERN: Yes, they do. Publication
15 can be what they do now; simply reduce to writing and
16 leave it in their office. This was a form of publication.
17 Publication can also mean putting in reports which they
18 may do. It is still there.

19 THE CHAIRMAN: Is there any further debate?
20 Are you ready for the question? The question arises on
21 the adoption of Amendment 58. The Clerk will ring the

1 quorum bell.

2 A vote Aye is a vote in favor of the amendment.
3 A vote No is a vote against. Cast your vote.

4 (Whereupon, a roll call vote was taken.)

5 Has every delegate voted? Does any delegate
6 desire to change his vote? The Clerk will record the
7 vote.

8 There being 49 votes in the affirmative and
9 69 in the negative, the motion fails and the amendment is
10 rejected.

11 The Chair has no other amendments to add to
12 sections after 5.31. This concludes consideration of
13 Part III under the debate schedule.

14 Delegate Weidemeyer, do you desire to offer
15 amendment DT?

16 DELEGATE WEIDEMEYER: I do, Mr. President.

17 THE CHAIRMAN: The pages will distribute the
18 amendment DT. This will be Amendment No. 59. The
19 Clerk will read the amendment.

20 MR. QUILLEN: Amendment No. 59, to Committee
21 Recommendation JB-1, by Delegates Weidemeyer, Ritter,

1 Rybczynski and Rush. On Page 9 Section 5.29 Administra-
2 tion of Judicial System line 36, after the word "rule"
3 insert the following: ", except that a District Court
4 judge may not be assigned to sit in an Appellate Court".

5 THE CHAIRMAN: The amendment having been
6 seconded, the Chair recognizes Delegate Weidemeyer to
7 speak to the amendment.

8 DELEGATE WEIDEMEYER: Mr. President, members
9 of the Convention, I won't take too long on this because
10 I think that everyone can see the purpose of this amend-
11 ment.

12 In the last sentence of Section 5.29 it reads
13 now, any judge may be assigned to assist temporarily in
14 any court, as prescribed by rule.

15 As I read that, it would mean that judges
16 everywhere throughout the court system could be
17 assigned anywhere to sit temporarily.

18 I don't know whether the committee intended
19 that that District Court judges would sit everywhere.
20 As it is now, the District Court under this new set-up
21 will take the place of our People's Court, our Municipal

1 Court and our trial magistrate, and I would assume that
2 since the District Court more or less will be a court of
3 rather limited jurisdiction, that the qualifications
4 will not be quite as heavy and severe as the judges of the
5 Superior Court.

6 I could conceive of some of the District
7 Court judges being perfectly able and qualified to sit
8 temporarily in Superior Court cases, but I have my doubts
9 as to whether many of them would be qualified to sit as
10 judges on the Intermediate Court of Appeals, or in the
11 Court of Appeals, and I must say I have conferred with
12 some delegates. They think well of this amendment and
13 some others have felt a little horror about it, but I
14 felt it was time to present it, and let this Convention
15 decide now and for all whether or not the District
16 judges of limited jurisdiction should sit on the
17 appellate division in special cases, and that is the simple
18 purpose of the amendment.

19 THE CHAIRMAN: Delegate Mudd.

20 DELEGATE MUDD: Mr. Chairman, ladies and
21 gentlemen of the committee, I must rise to oppose this

1 amendment.

2 This matter in a little broader form was pro-
3 posed and considered in our committee. The proposal before
4 our committee precisely was that the vertical assignment
5 of judges be prohibited in the Constitution.

6 I believe the suggestion probably received
7 more support to prohibit the assignment in the opposite
8 direction. There was some thought in our committee that it
9 probably was not practical to assign, for instance, a
10 Court of Appeals judge to a District Court.

11 This proposal by Delegate Weidemeyer and
12 others is to prevent the assignment to a court of higher
13 jurisdiction.

14 The exact proposition covering both up and
15 down assignment, in other words, vertical assignment in
16 our committee received only one vote to include it in the
17 Constitution as a restriction on the assignment of
18 judges within the rule-making power of the Court of
19 Appeals. ly members of the committee on the Judicial
20 Branch voted to omit such a provision from the Constitution.
21 Accordingly, I oppose the amendment.

1 THE CHAIRMAN: Any other discussion? Are you
2 ready for the question? . The Clerk will sound the quorum
3 bell.

4 The question arises on the adoption of Amendment
5 59. A vote Aye is a vote in favor of the amendment. A
6 vote No is a vote against. Cast your votes.

7 Has every delegate voted? Does any delegate
8 desire to change his vote? The Clerk will record the
9 vote.

10 There being 33 votes in the affirmative and 85
11 in the negative, the motion is lost. The amendment is
12 rejected.

13 The Chair believes this concludes consideration
14 of Sections 5.29 to 5.31. If so, we will move to a
15 consideration of Part 4 of the debate schedule.

16 The Chair recognizes Delegate Mudd for a brief
17 presentation of the Committee Recommendation.

18 DELEGATE MUDD: Mr. Chairman --

19 THE CHAIRMAN: For what purpose does Delegate
20 Price arise?

21 DELEGATE PRICE: Mr. Chairman, I have a very

1 small privilege to ask. One of the pages this morning,
2 and I suppose yesterday, was circulating a little booklet
3 in which delegates were signing their names for her
4 collection at home, and somewhere along the line that
5 book has been lost, and Mary would love to find it. If
6 anyone has a little blue book with pictures of all the
7 delegates in it, and pretty much completely endorsed by
8 all the delegates, would you bring it back this way,
9 please. She would like to have it for her collection.
10 Thank you.

11 THE CHAIRMAN: You might take a look in your
12 desks, if you don't mind and see if by any chance the lost
13 book has been put in it.

14 I might say that the pages all seem to value
15 these rosters very much, and have gone to considerable
16 trouble to get autographs, so if you can possibly find it
17 for her, we would greatly appreciate it.

18 Delegate Mudd.

19 DELEGATE MUDD: Mr. Chairman, ladies and
20 gentlemen of the committee, all I can say is here I am
21 again for the fourth time in six days.

1 In this debate over the past six days, as
2 debates of this kind often might proceed, I suggest one
3 question which has not been propounded and that is who is
4 on first. I shudder to think what the answer might have
5 been at some points in this debate.

6 May I venture the modest suggestion now
7 that if I may consider myself on third, at this stage of
8 the proceeding, I hope that home plate can be reached
9 before Thanksgiving.

10 I am now in the position of presenting the
11 majority report, for which there is no majority report,
12 but for which there is supporting memorandum. That is
13 another way of saying, I must defend why there is not in
14 the Constitution, or that is, Article 5 as proposed in the
15 Constitution, certain provisions which do appear in
16 the present Constitution.

17 We have readily agreed that the present
18 Constitution contains provisions with respect to the
19 office of Sheriff, Register of Wills, Notary Publics,
20 Justice of the Peace, Coroner and Elisor. These are
21 within the present Constitution and without downgrading the

1 importance or need for these offices, we have concluded
2 that they are an unnecessary inclusion in Article 5,
3 as we propose it for adoption by this committee.

4 I hasten to say that we have considered through a sub-
5 committee, chairmaned by Delegate Rosenstock, all of
6 the necessary transitory provisions dealing with these
7 very important offices, and now held by efficient and
8 dedicated people.

9 There will be a transitory provision recommended
10 by our committee that all of these officials elected
11 and now holding office continue in that position for the
12 expiration of their current elected terms.

13 With respect to the Sheriff, a subcommittee
14 of the Committee on the Judicial Branch, working in
15 conjunction with the subcommittee of the Executive and
16 Local Government Committees, has the recommendation
17 that we pass onto the legislature for its consideration
18 a provision to provide for Sheriff, either by local law or
19 by public terminal law for that important office in those
20 political subdivisions where it is deemed necessary that
21 such office continue.

1 The information and testimony before our
2 committee was very sharply contrasting. There are some
3 political subdivisions in the state which feel they no
4 longer have need for the office of Sheriff. On the other
5 hand, there are those political subdivisions which very
6 desperately need to continue in office a sheriff to per-
7 form the many important and useful functions now being
8 performed by the elected sheriffs.

9 We have no thought of being adverse to con-
10 tinuance of those offices in those jurisdictions where it
11 is desired they be continued.

12 May I remind you that it is not necessary for
13 us to say in our recommended Article 5 that these offices
14 may be continued. If we say nothing, as we have, with
15 respect to these offices, then the legislature, as well
16 as the local governments, are free to provide for these
17 offices as the need in that particular political
18 subdivision may require; not only to provide for the
19 office but the manner of selection.

20 With respect to the office of Register of
21 Wills, we readily agree that the functions performed by

1 that office are most important and particularly in the
2 administration of justice. As a matter of fact, the
3 Register of Wills, we readily acknowledge, performs
4 more quasi-judicial functions under the present system
5 than does the Orphans Court, which will no longer be
6 active in the four tier structure, which you have
7 approved.

8 It is necessary under the transitory provisions,
9 which we will recommend, that presently elected Registers
10 of Wills continue in office for their elective term and
11 it is contemplated that this very necessary office
12 will have to be continued with all the powers now
13 enjoyed by the Register of Wills, probably under that
14 name, but possibly as a deputy or arm of the Clerk of
15 the Court.

16 We see no necessity for provision in the
17 Constitution with respect to Notary Publics, any further
18 need for Justices of the Peace, or for a Coroner and
19 Elisor to be given constitutional stature. Accordingly,
20 the recommendation of your Committee on the Judicial
21 Branch, as it has been referred to you, Sections 5.01

1 through 5.31, although I believe one section has now
2 been deleted so that our total recommendation will consist
3 of 30 sections, is our complete recommendation, and in
4 doing so it is the recommendation of the majority that
5 the officers I have mentioned not be given constitutional
6 statute, which, however, is not to say that our committee
7 does not recognize these offices to be of substantial
8 statute and to be provided in the manner prescribed by the
9 legislature or local governments.

10 THE CHAIRMAN: Are there any questions of the
11 committee chairman?

12 If not, the Chair recognizes Delegate Johnson
13 to present the minority report. Delegate Johnson.

14 DELEGATE JOHNSON: Mr. Chairman, if there
15 is no objection, I would just as soon make the
16 report from here. It is extremely brief.

17 THE CHAIRMAN: Proceed.

18 DELEGATE JOHNSON: The minority members of the
19 committee agree with the majority members of the
20 committee with respect to certain deletions. However,
21 because of the fact that we are establishing a unified
judicial system, which widely departs from our current

1 system, we strongly suggest that there be sections in the
2 Constitution that will help in the changeover, and
3 therefore we urge the adoption of sections pertaining to
4 the permissive establishment of the office of Sheriff,
5 and the office of Register of Wills, and it is to these
6 two sections only that we have amendments for additions
7 to the judicial article.

8 I will not take this time to go into detail,
9 because we have some delegates who would like to be
10 heard on this matter, but if my memory serves me
11 correctly, the office of Sheriff has been in existence in
12 this state since some time in the 17th Century. It has
13 been in our Constitution, in practically every Constitution,
14 and as Chairman Mudd has indicated, it is a highly important
15 office, and many of the counties in this state where as
16 indeed it is the chief law enforcement office in most of
17 the counties in the state, and I believe that it is the
18 prime law enforcement office in 18 counties of this
19 state.

20 We think that this office deserves to be put
21 into the Constitution, where it has long been.

1 Now under the unified judicial system, we have
2 departed from the Register of Wills office -- excuse
3 me, from the Orphans Court office.

4 There is only one county in this state that
5 has departed from the Orphans Court as we know it today,
6 and in that county this new system, which is similar to
7 the system which we will adopt under the unified judicial
8 court system, that procedure is not working.

9 We agree that we should eliminate the
10 Orphans Court as it exists in Maryland today, but we are
11 also greatly concerned because of the field of specializa-
12 tion that is required in Orphans Court work and in matters
13 of probate, that someone, some individual, with particular
14 expertise, should be assigned to assist both litigants,
15 counsel, and parties interested in probate matters.

16 This field is growing faster than any other
17 field in the law today, and if we do not provide for the
18 protection of an expert in this particular field, we feel
19 that the same chaos will result as has resulted in one
20 of the counties in our state that has done away with the
21 Orphans Court setup.

1 For those reasons and for others that you will
2 hear in a moment, we urge that a section be added to the
3 Judiciary Article which will provide for the permissive use
4 of the office of Sheriff, and the permissive establishment
5 of the office of Register of Wills.

6 THE CHAIRMAN: The Chief Page will distribute
7 Amendment R. This will be Amendment No. 60. The Clerk will
8 read the amendment.

9 MR. QUILLEN: Amendment No. 60 to accompany
10 Minority Report No. JB-1 to Committee Recommendation No.
11 JB-1, by Delegates Johnson, Harkness, Hickman, Kahl, Murphy,
12 Siewierski, Rush: On Page 9 following Section 5.30 add the
13 following section:

14 "Section 5.____ Sheriffs. The General Assembly
15 may provide by law for the office of sheriff in any county
16 of this State. The selection, tenure, compensation, power
17 and non-judicial duties of the sheriff shall be prescribed
18 by law. The General Assembly may provide by law for
19 deputies of the sheriff in each county. The judicial duties
20 of the office of sheriff may be prescribed by rule."

21 THE CHAIRMAN: Please correct the spelling of

1 Delegate Siewierski's name, as one of the sponsors.

2 The amendment having been seconded, the Chair
3 recognizes Delegate Johnson.

4 DELEGATE JOHNSON: Mr. Chairman --

5 THE CHAIRMAN: We are under controlled debate.

6 DELEGATE JOHNSON: Mr. Chairman, I yield four
7 minutes to Delegate Harkness.

8 THE CHAIRMAN: Delegate Harkness, there is only
9 a total of five minutes. Do you have that in mind?

10 DELEGATE JOHNSON: No. I thought it was ten
11 minutes, Mr. Chairman.

12 THE CHAIRMAN: The Debate Schedule says five
13 minutes.

14 DELEGATE JOHNSON: I am sure you are correct.
15 I yield then two minutes to Delegate Harkness.

16 THE CHAIRMAN: Delegate Harkness.

17 DELEGATE HARKNESS: Mr. Chairman, fellow dele-
18 gates, when this matter of sheriff came before the Judicial
19 Committee, there was almost an even division. There was a
20 proposal to establish the office of elective sheriff in
21 the Constitution. That proposal failed to receive a

1 favorable recommendation in the Committee by 9 to 10.

2 We further had in the Committee several, numerous
3 witnesses that appeared; and there was almost an even div-
4 ision, I would say, about those. Some thought the sheriff
5 should be preserved in the Constitution. Others thought it
6 shouldn't. So with that provision, the division, the
7 Minority felt this was a matter that should be settled once
8 and for all on the Floor of this Convention.

9 I simply wish to remind the delegates that the
10 sheriff was provided for in the Constitution of 1776, has
11 remained intact in each Constitution since that time up to
12 the present time.

13 Now, there has been some talk about the sheriff's
14 duties in the larger counties have been largely absorbed.
15 That is true. But in sixteen or seventeen counties in this
16 State, the sheriff remains the chief law enforcement officer.
17 In addition, regardless of whether you put the sheriff in
18 the Constitution, the sheriff does have certain definite
19 judicial duties. He goes out and makes judicial sale,
20 serves writs of subpeona, et cetera. We provide in this
21 amendment that the sheriff's judicial duties will be spelled

1 out by rule, and he should be selected in a manner pre-
2 scribed by law, and in such a manner that it enjoins con-
3 stitutional dimension. Therefore, I would urge the adoption
4 of this amendment.

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: Mr. Chairman, I would like to
7 yield two or three minutes as he prefers to Delegate Fox.

8 THE CHAIRMAN: Delegate Fox.

9 DELEGATE FOX: Mr. Chairman, ladies and gentle-
10 men of the Committee, I am aware that the sheriff is an
11 active office. It was originally called the sherrive back
12 in midieval times, and he helped to gather doomsday votes,
13 but I think it is time we sealed his doom as far as the
14 small counties are concerned, at least. This constitutional
15 amendment goes directly contrary to the action that we have
16 taken so far as local government is concerned.

17 We have said in the Local Government provision
18 that we are going to allow the counties to run their own
19 show, and I urge that you not saddle them with sheriffs
20 that in many counties they do not need. I served for eight
21 years as a State's Attorney in my own county, and I am

1 afraid many times in criminal investigations the sheriff
2 is more in the way than he is a help.

3 Those counties that would like to have a sheriff
4 and have some reason for keeping him, all well and good,
5 but in many counties he is the jailkeeper primarily, and
6 exercises some other functions; and I do not believe that
7 he should be enshrined, as we have used that word in the
8 Constitution, nor that small counties should be saddled
9 with him when they really don't need him.

10 THE CHAIRMAN: Delegate Johnson.

11 DELEGATE JOHNSON: Mr. Chairman, I yield two
12 minutes to Delegate Carson.

13 THE CHAIRMAN: Delegate Carson.

14 DELEGATE CARSON: Mr. Chairman, I want to admit
15 first that I am very biased and interested with regard
16 to the sheriffs, because in Harford County, I think we have
17 an excellent sheriff's office. That office performs many
18 functions, and you could break them down into at least
19 three major groupings. First, he is the chief law enforce-
20 ment officer in Harford County. Secondly, he is the jail-
21 keeper in Harford County, and performs all the functions of

1 transporting the prisoners to the court and back, and from
2 the jail to the various prisons and penitentiaries, and
3 thirdly he is the process server and performs other func-
4 tions with regard to the court which might be classified
5 as judiciary-type housekeeping functions.

6 All the deputies in Harford County have received
7 police training and are in my opinion, and I think in the
8 opinion of people in our county, competent and well-trained.

9 The sheriff and his deputies are interested in
10 the people, and they do a reasonably good and excellent
11 job in Harford County. They do also in other counties,
12 and I understand eighteen of the counties, the sheriff is
13 the chief officer. I suggest to you that you permit us to
14 keep through the agency of the General Assembly our sheriff.
15 I suggest to you the present amendment does not require a
16 sheriff in the other counties but permits the General
17 Assembly on a county-by-county basis to provide a sheriff
18 where it thinks it appropriate; and if the delegates think
19 they might vote against this measure, I suggest to you
20 there is a tall man out there calling, Sheriff Dillon,
21 looking for you.

1 THE CHAIRMAN: Delegate Mudd.

2 DELEGATE MUDD: May I yield two minutes to
3 Delegate Schneider, Chairman of our Subcommittee?

4 THE CHAIRMAN: Delegate Schneider.

5 DELEGATE SCHNEIDER: Mr. Chairman, ladies and
6 gentlemen, the Committee on the Judiciary studied the
7 problems of sheriff very closely, and we came to the con-
8 clusion that since it is not a uniform office, since it
9 is different in Prince Georges from what Baltimore County
10 has, which is different yet from what Baltimore City has,
11 and yet different from Montgomery and altogether different
12 from Harford County, that it is not a uniform office, and
13 not being uniform, it should not be mandated in the Con-
14 stitution.

15 Now, the Minority Report calls for a "may"
16 provision, permissive provision in the Constitution.

17 I submit the constitutional silence will be per-
18 missive. It will allow the office of sheriff if the
19 General Assembly so feels fit to put in the Constitution
20 the word "may". To put "sheriff" in is to put in a lot of
21 words and keep the sheriff's name before the Constitution
but nothing else.

1 We have an act in one other Article on this Floor
2 in which we put the word "may". We had a good reason then,
3 as we had other structural items put into that Article.
4 That was the section on the militia. That was important
5 to put the militia "may", in there, unless you put nothing
6 at all. Here if we put "may" in, we are just adding
7 extra language.

8 The Committee recommendation will be the transi-
9 tory provision to provide the office of sheriff continue
10 long enough to allow the phaseout in the counties that do
11 not see a need for the office. In the counties that do see
12 a need for the office, as their chief law enforcement
13 officer, they will be allowed to establish the office, and
14 counties where it is not of the moment that he is perhaps
15 in the small counties, where we just heard he is of great
16 moment, there the office can be established there. I would
17 urge you go with the Committee once more and urge you to
18 defeat this useless provision as offered.

19 THE CHAIRMAN: Delegate Johnson, you have two
20 minutes to allocate.

21 DELEGATE JOHNSON: I yield that time, Mr. Chairman,

1 to Delegate Grant.

2 THE CHAIRMAN: Delegate Grant.

3 DELEGATE GRANT: You can't very well understand
4 constitutional law without understanding the history behind
5 it. The sheriff was the very first official of any impor-
6 tance to appear on any scene. After that, and after he was
7 established, or established some kind of order, then you
8 get law. It is perfectly true in the urban counties that
9 the people have become sophisticated, become urban, they
10 have extensive law enforcement agencies of their own. His
11 duties in those counties, I would point out to you, are
12 really not still very similar to what he must do in the
13 more primitive, less settled counties where he must also go
14 out after criminals. For the same reasons that Judge Hen-
15 derson brought up as to why we had to make a clerk of the
16 court an elective office because it was such an office to
17 unscramble, I suggest to you you have got the same problem
18 with the sheriff. The sheriff in addition to the law en-
19 forcement duties for which he is most glamorously known
20 also had to perform duties of judicial sales, which becomes
21 a member of the State judicial system. I point out to you

1 in the Local Government Article all judicial powers have
2 been withdrawn from the local governments; that if you wish
3 the sheriff to perform these judicial functions, you have
4 got to make some provision for it. It is perfectly true
5 that the situation does very much vary from county to
6 county. However, I would point out to you that the amend-
7 ment that is proposed permits a variation from county to
8 county. This is one of the rare instances in which it was
9 felt that there should be a variation from county to coun-
10 ty in the Acts of the General Assembly.

11 This is simply an enabling piece of legislature,
12 to enable the General Assembly to enact a law to provide
13 an official to perform a very minimal service, if neces-
14 sary, of judicial sale, or a very maximal service if neces-
15 sary on the complete range of law enforcement.

16 THE CHAIRMAN: Delegate Mudd, you have about a
17 minute and a half.

18 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
19 men of the Committee, I respectfully suggest to Delegate
20 Grant that I believe the necessary functions to be per-
21 formed by an officer as an adjunct to the judicial system

1 such as he mentions might be performed by a member of
2 the Executive Department under the rule-making power of
3 the Court of Appeals; so I do not think that the absence of
4 this amendment in the Constitution would prohibit or in
5 any way prejudice the operation of the judicial system.

6 May I also say to Delegate Carson that every-
7 thing he said good about his sheriff in his county applies
8 to the sheriff in my county. He is an efficient, capable
9 and conscientious elected official. However, we do not
10 need this constitutional amendment to let him continue
11 in office for the balance of his elective term, nor do we
12 need this constitutional provision in this draft to allow
13 the legislature or local government to provide for con-
14 tinuance of such an office. Therefore, I oppose this amend-
15 ment.

16 THE CHAIRMAN: For what purpose does Delegate
17 Bushong arise?

18 DELEGATE BUSHONG: I want to ask Delegate Mudd
19 a question.

20 THE CHAIRMAN: Before you do that, is there any
21 delegate desires to speak in favor of the amendment?

1 (There was no response.)

2 If not, Delegate Mudd, do you yield to a ques-
3 tion?

4 DELEGATE MUDD: Yes, Mr. Chairman.

5 THE CHAIRMAN: Delegate Bushong.

6 DELEGATE BUSHONG: Delegate Mudd, the sheriff is
7 responsible and under bond for the issuing of all levies
8 and executions and if ordered to sell, must do so. Who is
9 going to replace that function, and if he doesn't do it,
10 who is going to be responsible to the people, whereas he
11 can be sued on his bond?

12 THE CHAIRMAN: Delegate Mudd.

13 DELEGATE MUDD: Any other official who by rule
14 and who is under bond could be bound to do that by rule of
15 court.

16 THE CHAIRMAN: Anyone else desire to speak in
17 favor of the amendment? Delegate Boileau.

18 DELEGATE BOILEAU: I am sorry, Mr. Chairman, I
19 wish to speak against the amendment.

20 THE CHAIRMAN: Anyone desire to speak in favor?
21 Delegate Vecera.

1 DELEGATE VECERA: Mr. Chairman, members of the
2 Committee, I think a few weeks ago we constituted natural
3 resources in the Constitution, and I deem this more impor-
4 tant perhaps than natural resources. Therefore, I would
5 urge the adoption of this particular amendment.

6 THE CHAIRMAN: The Chair recognizes Delegate
7 Boileau to speak in opposition to the amendment.

8 DELEGATE BOILEAU: Mr. Chairman, fellow dele-
9 gates, Amendment 60 is only simply an offer of flexibility.
10 It does in fact cut out that body by inference in our
11 new constitutional setup who can best determine the need
12 for a sheriff at that local level; and that body is the new
13 county government, which will, under the new system, have
14 greater authority, greater responsibility, and I am sure,
15 greater knowledge of the local needs of their communities
16 than will the General Assembly as a whole.

17 Silence, as Delegate Schneider says, is by far
18 the best way to deal with this problem.

19 THE CHAIRMAN: Any further discussion? Are you
20 ready for the question? The Clerk will sound the quorum
21 bell.

1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: Mr. Chairman, could I direct a
3 question to Delegate Moser.

4 THE CHAIRMAN: Delegate Moser, can you yield to
5 a question?

6 DELEGATE MOSER: I yield.

7 THE CHAIRMAN: Delegate Case.

8 DELEGATE CASE: Delegate Moser, under the local
9 government provisions, would the General Assembly have the
10 power to pass a law which provides for the office of sheriff
11 in these various counties perhaps on different terms and
12 conditions for different counties?

13 THE CHAIRMAN: Delegate Moser.

14 DELEGATE MOSER: They would be able to withdraw
15 the power generally and then yield it back possibly with
16 utilization of standards and procedures. I don't think
17 this is enlightening. The point is that ultimately the
18 county itself would have to pass the law to establish the
19 office of sheriff if it were to be done on a non-uniform
20 basis.

21 THE CHAIRMAN: Delegate Case.

1 DELEGATE CASE: In other words, unless this
2 provision is passed, the General Assembly itself could not
3 provide for the office of sheriff of the various counties?

4 THE CHAIRMAN: Delegate Moser.

5 DELEGATE MOSER: That isn't exactly what I said.
6 They couldn't provide positively for it, but they could set
7 such standards that would require the county to follow
8 these standards. They couldn't enact a positive law saying
9 that there will be a sheriff in Tolver County, for instance.

10 THE CHAIRMAN: Delegate Moser, the Chair would
11 like to be sure that he understands your answer.

12 Is it that the legislature by public general law
13 could provide for a sheriff in each county and it could
14 provide the method of selection of such a sheriff, is that
15 what you are saying?

16 DELEGATE MOSER: That is not what I was saying.

17 THE CHAIRMAN: Is that true?

18 DELEGATE MOSER: It is correct, but it could not
19 vary the power to the sheriff could not vary from county
20 to county. I think that is clear.

21 THE CHAIRMAN: Are you ready for the question?

1 Delegate Barrick.

2 DELEGATE BARRICK: I would like to ask Delegate
3 Moser a question.

4 THE CHAIRMAN: Delegate Moser, do you yield to a
5 question?

6 DELEGATE MOSER: I yield.

7 THE CHAIRMAN: Delegate Barrick.

8 DELEGATE BARRICK: Would your interpretation of the
9 general law be in conflict with the provisions that are
10 set out in this section?

11 THE CHAIRMAN: Delegate Moser.

12 DELEGATE MOSER: I don't know that I understand
13 Delegate Barrick's question.

14 THE CHAIRMAN: Delegate Moser, proceed.

15 DELEGATE MOSER: What do you mean by conflicts?

16 THE CHAIRMAN: Delegate Barrick.

17 DELEGATE BARRICK: As I understand this section,
18 it is to provide the General Assembly with power to pass a
19 law to a specific county or to several counties, but to deal
20 with them differently as far as the sheriff is concerned.

21 THE CHAIRMAN: Delegate Moser.

1 DELEGATE MOSER: That would be the effect of this
2 provision.

3 THE CHAIRMAN: Delegate Barrick.

4 DELEGATE BARRICK: All right. Would that be in
5 conflict with your interpretation of the general law as we
6 dealt with it with the local government?

7 THE CHAIRMAN: Delegate Moser.

8 DELEGATE MOSER: Yes, in the sense that it would
9 get the legislature back into doing things that I believe,
10 at least, the local government committee thought should
11 properly be handled by the counties themselves.

12 THE CHAIRMAN: Delegate Barrick.

13 DELEGATE BARRICK: What bothers me is that there
14 seems to be a conflict within the interpretation of the local
15 government and the interpretation here. If there is a con-
16 flict, which would prevail?

17 THE CHAIRMAN: Delegate Moser.

18 DELEGATE MOSER: This would prevail, I think,
19 because of the interpretation we have placed upon 7.06
20 which is the limitation on the local government laws, that is
21 to say, that the utilization of the word "by-law", where

1 it applies to a state function such as this, would permit
2 a variation from county to county.

3 THE CHAIRMAN: Delegate Moser, the Chair is
4 very perplexed at the colloquy that has just been pursued
5 in the light of Section 7.06 and the discussions which the
6 Chair thought had occurred in that committee.

7 If the sheriff were to be designated by the
8 legislature as a state official performing a state func-
9 tion, such as police powers, would it not clearly be
10 within Section 7.06?

11 DELEGATE MOSER: It would, Mr. Chairman, if this is
12 a state function truly.

13 THE CHAIRMAN: Is not the exercise of police
14 power a state function?

15 DELEGATE MOSER: I suppose it is, and I would have
16 to say yes to your question.

17 THE CHAIRMAN: Delegate Raley.

18 DELEGATE RALEY: Would Delegate Moser yield to a
19 question?

20 THE CHAIRMAN: Delegate Moser.

21 DELEGATE MOSER: I yield.

1 THE CHAIRMAN: Delegate Raley.

2 DELEGATE RALEY: Under the local government sec-
3 tion, couldn't each county set up a sheriff under their
4 own inherent power given to them if they so desired?
5 Couldn't they set up a sheriff in each county if they
6 so desired, through their instrument of government?

7 THE CHAIRMAN: Delegate Moser.

8 DELEGATE MOSER: Yes.

9 THE CHAIRMAN: Delegate Grant.

10 DELEGATE GRANT: Will Delegate Moser yield to
11 a question?

12 THE CHAIRMAN: Delegate Moser.

13 DELEGATE MOSER: I continue to yield.

14 THE CHAIRMAN: Delegate Grant.

15 DELEGATE GRANT: In the granting of power to
16 county, I believe judicial power is excluded, they may
17 exercise every power except judicial power. If there is
18 anything judicial that this office would apply, it would
19 be beyond the power of the county to grant it, would it
20 not?

21 THE CHAIRMAN: Delegate Moser.

1 DELEGATE MOSER: As I read the amendment, it
2 does not relate, does it -- well, it does in the sense of
3 a provision by rule. And your suggested answer is
4 correct, that they could not, your counties could not
5 provide for judicial power in the sheriff. However, pre-
6 sumably the court by rule could do this, even if it is
7 a county office. They could assign judicial functions to
8 it.

9 THE CHAIRMAN: Delegate Willoner.

10 DELEGATE WILLONER: I don't want to debate the
11 Local government.

12 The police power is part of the sheriff power,
13 isn't that correct?

14 THE CHAIRMAN: Delegate Moser.

15 DELEGATE MOSER: That is correct.

16 THE CHAIRMAN: Delegate Case.

17 DELEGATE CASE: Mr. Chairman, I am probably
18 out of order here, but you are so adept at doing this,
19 could the Chair state for the benefit of the committee
20 just how he understands the powers of the local government
21 versus the state, vis-a-vis the creation of the office

1 of sheriff?

2 I must confess, Delegate Moser got me so confused
3 I don't know whether he can or cannot do it.

4 THE CHAIRMAN: The Chair will be glad to state
5 it with one qualification. The Chair has views on one as-
6 pect of the law he happens to know is not in accord with
7 all other delegates. Feel free to dissent, and I will
8 indicate the area in which I think that such a dissent
9 could occur.

10 Under the local government article adopted by the
11 Convention to the extent that the sheriff is designated as
12 a state agent or agency performing the state functions, he
13 could clearly be brought into existence by an act of the
14 legislature and the act of the legislature could provide
15 for his appointment, or his election, or, if there is
16 some other way of selection, could provide for his selection
17 in any other way.

18 Delegate Jones.

19 DELEGATE JONES: A point of inquiry. Wouldn't
20 it have to be a uniform law?

21 THE CHAIRMAN: That is what I am coming to. To the

1 extent that it is a state agency, in the opinion of the
2 Chair under Section 7.06 which I have read, it would
3 not have to be a public general law, that is one of
4 uniform application.

5 To the extent that it was deemed not to be a
6 state agency, and hence not within the exception of
7 Section 7.06, it is the opinion of the Chair, and this is
8 just a private opinion as a lawyer, that a public general
9 law need not necessarily have absolute uniform application
10 in every county.

11 I think you could have a public general law pro-
12 viding for sheriffs that would provide a different salary
13 for sheriffs in localities of different populations for
14 instance. There are some who do not agree with that view.
15 There are some who feel that a general public law must apply
16 without deviation in every state, every county. In other
17 words, to sum it up, in my personal opinion, what is sought
18 to be accomplished by this section could be accomplished
19 by the legislature in the absence of this section.

20 Delegate Carson.

21 DELEGATE CARSON: Mr. Chairman, I don't want to

1 seem impertinent and I am not being so, but could I
2 address a question to you, sir?

3 THE CHAIRMAN: Yes, sir.

4 DELEGATE CARSON: If this proposed amendment is
5 passed, would you agree that there is just absolutely no
6 question so far as the General Assembly being able to act
7 in this manner and it would make it clear as a bell?

8 THE CHAIRMAN: If it is passed there can be no
9 question that the General Assembly has the power granted
10 to it by this section.

11 Delegate Hutchinson.

12 DELEGATE HUTCHINSON: I would like to ask Delegate
13 Johnson a question if he would yield.

14 THE CHAIRMAN: Delegate Johnson, do you yield to
15 a question?

16 DELEGATE JOHNSON: Yes, Mr. Chairman.

17 THE CHAIRMAN: Delegate Hutchinson.

18 DELEGATE HUTCHINSON: If we pass this provision
19 and put it in the Constitution, then would the local
20 government still be able to have their own sheriffs office,
21 even if the other counties didn't?

1 DELEGATE JOHNSON: If the General Assembly operated
2 in this field, then the local government could not in my
3 opinion.

4 THE CHAIRMAN: Delegate Hutchinson.

5 DELEGATE HUTCHINSON: Then I will vote against
6 this amendment.

7 THE CHAIRMAN: Are you ready for the question?
8 Delegate Churchill Murray.

9 DELEGATE C. MURRAY: If we do not pass this, will
10 it leave the individual counties with home rule free to
11 establish a sheriffship of their own?

12 THE CHAIRMAN: To whom is your question directed?

13 DELEGATE C. MURRAY: The Chair seemed the most
14 convenient. (Laughter.)

15 THE CHAIRMAN: In the interests of time, the
16 Chair will undertake to answer; in his private opinion the
17 counties would be free to provide for a sheriff to perform
18 local functions.

19 DELEGATE C. MURRAY. This then, is what I advoca-
20 ted. I feel if authority is given to the General Assembly,
21 there will be great temptation to provide it in all

1 counties whether really needed or not.

2 THE CHAIRMAN: Delegate Johnson, did you desire
3 the floor?

4 DELEGATE JOHNSON: I wanted a clarification, if the
5 Chair will yield to a question?

6 THE CHAIRMAN: Which Chair?

7 DELEGATE JOHNSON: You, Mr. Chairman.

8 THE CHAIRMAN: Proceed.

9 DELEGATE JOHNSON: If you would yield for a ques-
10 tion. Did I understand you to say, naturally, without
11 endorsing this amendment, Mr. Chairman, that it is otherwise
12 in order?

13 THE CHAIRMAN: I am not sure I understand the
14 question. What do you mean by if I don't endorse it, it
15 is otherwise in order?

16 DELEGATE JOHNSON: That the amendment is in fact
17 in order and that it would be perfectly proper to have
18 a section similar to this or a section like this in
19 our Constitution and that it is not inconsistent with
20 the article.

21 THE CHAIRMAN: I think you're asking for the

1 personal opinion of the Chair and the only way I can answer
2 it is to indicate I intend to vote against the amendment.

3 I do not think it is necessary. I think it does harm.

4 The Chair couldn't refrain from determining that Delegate
5 Mudd is relaxing in high glee. (Laughter).

6 Delegate Johnson.

7 DELEGATE JOHNSON: What concerns the members of
8 the minority is the fact that inasmuch as the local
9 governments cannot act in matters pertaining to judicial
10 power, that it is perfectly possible, is it not, that if the
11 General Assembly is not given permission to establish the
12 office of sheriff, that the judicial branch could establish
13 the office of process server and the matters relating there-
14 to and for all practical purposes do away with the office
15 of sheriff in the local government so that the sheriff in
16 the local government will have little or no duties, but will
17 find that his office has been left with routine functions?

18 THE CHAIRMAN: I think that statement is ab-
19 solutely correct to the extent that it pertains to the
20 purely judicial duties of the sheriff and is equally in-
21 correct insofar as it pertains to non-judicial duties.

1 I include in non-judicial duties police powers.

2 Are you ready for the question? (Cries of "Ques-
3 tion.")

4 THE CHAIRMAN: Ring the quorum bell, please.

5 The question arises on the adoption of Amendment
6 60. A vote Aye is a vote in favor of the amendment; a
7 vote No is a vote against.

8 Cast your votes.

9 Has every delegate voted? Does any delegate desire
10 to change his vote?

11 The Clerk will record the vote.

12 There being 50 votes in the affirmative and 76
13 in the negative, the motion is lost and the amendment is
14 rejected.

15 Pages will please distribute Amendment Q . This
16 will be Amendment Number 61 to accompany Minority Report
17 JB-1 to Committee Recommendation JB-1 by delegates Johnson,
18 Harness, Hickman, Kahl, Murphy, Siewierski, and Rush.

19 "On page 9 following Section 5.30 add the follow-
20 ing section: "Section 5. _____ Registers of Wills. The
21 General Assembly may prescribe by law for a register of wills

1 in any county of the State. The selection, tenure and
2 compensation of the register of wills shall be prescribed
3 by law. The General Assembly may prescribe by law for
4 clerks in the office of register of wills upon certification
5 of need from the chief judge of the Superior Court. The
6 powers and duties of the register of wills shall be
7 prescribed by rule."

8 THE CHAIRMAN: Amendment Number 61 having been
9 seconded, the Chair recognizes Delegate Johnson to speak
10 to the amendment.

11 DELEGATE JOHNSON: Mr. Chairman, I yield whatever
12 time is allotted, I believe five minutes under the con-
13 trolled time.

14 THE CHAIRMAN: Ten minutes.

15 DELEGATE JOHNSON: Ten minutes. I yield the time
16 to Delegate Rybczynski.

17 THE CHAIRMAN: Delegate Rybczynski.

18 DELEGATE RYBCZYNSKI: Mr. Chairman and ladies
19 and gentlemen of the Convention, I have a pretty good
20 notion but I think this might very well be the last amend-
21 ment to this article, and I feel pretty good about it,

1 because we have a winner at this time. We are starting
2 out first of all with a few admissions previously read to
3 us.

4 Number one, as you will recall, Chairman Mudd
5 more than a few minutes ago, admitted that this is a
6 quasi-judicial office and he expects that his committee
7 will recommend that this office continue on. He suggested
8 that possibly it will become that of deputy to the Superior
9 Court Clerk's office. However, the important thing is
10 that it is a very important office and it must remain as
11 such.

12 Secondly, you will recall that Delegate Hutchinson
13 gave us that very inspiring talk about the necessity of
14 keeping all elective offices. In addition to that, Delegate
15 Scanlan pointed out yesterday in his very eloquent speech
16 about judges that we do have the same system or the
17 probate system within the Federal Court over in Washington,
18 D. C., so that you can see I have stood up on this question
19 with great confidence.

20 Now, just for a very tiny little bit of history,
21 I find the first enactment within our past having to do

1 with the register of wills office goes back to 1877.
2 Chapter 87 of that year starts the ball moving on the
3 register of wills office.

4 Now, I would like to point out to you the salient
5 differences between this office and the normal duties of the
6 regular Superior Court clerk as we will note in the future.
7 Number 1, the Clerk of the Court can be classified gen-
8 erally as a keeper of the record and a keeper of order
9 within the courtroom itself.

10 Generally, attorneys will file papers with the
11 clerk, the clerk will record them, he will docket them,
12 he will bring the files to the courtroom. This is generally
13 in this business.

14 However, listen to some of these things that are
15 the responsibility of the register of wills. He stores
16 the wills for safe keeping for those who want them to
17 store the wills. Under his jurisdiction, we have ap-
18 praisers, accountants. He has clerks whose job it is to
19 keep files moving, not just to keep them in the office,
20 but to actually see to it that the work is going on and
21 that the file keeps moving. He is at power to admit wills

1 to probate. He is at power to open estates with or
2 without wills. At times his deputies must go out and hunt
3 up witnesses or visit witnesses who are unable to come to
4 his office, that is, witnesses on wills.

5 His job goes to the substance of the case and
6 not merely to the form. He has an obligation to see to
7 it that estates are processed in good order. By way of
8 collection of taxes, the office of register of wills of
9 Baltimore City, it is contemplated for this year and
10 next year, will collect approximately five million dollars
11 in taxes.

12 He publishes notices, he keeps track of debts that
13 are put on file with respect to cases and estates. He
14 keeps records and files on the estates of minors and not
15 only does he do that, but he sees to it that the money is
16 kept in good safe places, such as Federally insured
17 building associations and banks.

18 He handles estates in cooperation with foreign
19 jurisdictions.

20 Ladies and gentlemen, this office is enshrined
21 in the present Constitution in Section 41 of Article 4, so

1 we are not proposing something new to you. I strongly
2 suggest to you that this is a very proper office, a very
3 important office for an elective position.

4 Now, Mr. Chairman, and ladies and gentlemen, for
5 the past, I believe the Chairman said six days, four days,
6 we have been talking about this judicial session and from
7 time to time there have been little public remarks made and
8 some private remarks made about the attorneys speaking too
9 often and too quickly on all these questions.

10 Well, we have been talking about our profession.
11 We have been trying to defend ourselves. We hope that what-
12 ever product is released from this committee will make for
13 a better judiciary in the future, however in the meantime,
14 I want to speculate on just what is going to happen when
15 we start talking about the Executive section and we
16 see all the future aspirants for office of Governor, attorney
17 general, and office of controller, who will be jumping up
18 and down like a jack-in-the-box to protect their interests,
19 and wait until the teachers start talking about who is
20 elected to the Board, and the housewives wanting two pots
21 for every chicken.

1 I want to back up Delegate Johnson and his
2 subcommittee. It has been a privilege and a pleasure for
3 me to do it. He has worked it sincerely and I think his
4 committee worked it sincerely. I have tried to work it
5 sincerely. Delegate Johnson has tried to work long and
6 hard and I hope that before this Convention is over, every-
7 one will show appreciation to Delegate Johnson for the very,
8 very hard work that he has put in on this matter.

9 Just as one side matter. Tomorrow is a holiday.
10 We are going to be sitting down for dinner. Won't it be
11 a pleasure for me to look up at the shining faces of all my
12 children and all my in-laws and my other family and
13 be able to say "Gee whiz, we really got that amendment 61
14 through, and I spoke for it, and we can all be happy
15 and proud." (Applause.)

16 THE CHAIRMAN: Delegate Mudd.

17 DELEGATE MUDD: May I inquire of the Chair if
18 it is my obligation to answer all of that? (Laughter.)

19 THE CHAIRMAN: You have ten minutes either to
20 answer or to yield to others.

21 DELEGATE MUDD: I will take a couple of minutes, i f

1 I may, to concur in all the kind things Delegate Rybczynski
2 has said about spokesman Delegate Johnson for the minority.

3 We worked opposite each other, but certainly he
4 has been conscientious and diligent and I respect his
5 judgment in all of these matters, and regret that I have
6 had to vote against him.

7 May I say also in explanation for rising in
8 opposition to the amendment, Delegate Rybczynski, that
9 I am not exhibiting myself as a candidate for register
10 of wills. Also I apologize to the lawyers for arising
11 again once too often, but I think in terms of my position
12 as spokesman for the majority as having for my clients the
13 Committee of the Judicial Branch, and no one ever had a
14 better group of clients, except this morning one got out
15 of hand trying to represent himself.

16 This to me seems to be almost an identical method
17 with that we just dealt with in regard to the sheriff. I
18 agree that this is a most important office. There is no
19 disposition or attempt on the part of my committee to down-
20 grade the importance of the office or to suggest that
21 the functions now performed by the very many capable

1 registers of wills will in any way be lost to the state.

2 I repeat again that the work of that office and
3 the statutory responsibility assigned to the register of
4 wills is a quasi-judicial function to register the wills
5 as an officer of the Court under the present court struc-
6 ture, that will no longer be the situation, and I respect-
7 fully suggest the most convenient and efficient method for
8 this judicial arm of the judicial system to operate is a
9 special deputy or in some category under the clerk of
10 court, more closely assigned to the judicial branch, and
11 I envision the register of wills of the future to be al-
12 most identical with the trust clerk that we now have in so
13 many counties to whom the duties of administering trust
14 estates is exclusively assigned.

15 I can assure you that my first opinion, rejection
16 of this amendment will not in any way derogate the im-
17 portant functions now performed by the register of wills
18 and I am confident that many of the present registers of
19 wills or their very competent deputies will be continuing
20 as part of the Clerk's office function under the overall
21 proposal that our majority has recommended and I

1 therefore urge you to vote against the amendment.

2 THE CHAIRMAN: Is there any further discussion?

3 Are you ready for the question? (Cries of
4 "Ready.")

5 THE CHAIRMAN: The Clerk will ring the quorum
6 bell, please.

7 The question arises on the adoption of Amendment
8 Number 61; a vote Aye is a vote in favor of the amendment;
9 a vote No is a vote against.

10 Amendment 61, cast your vote.

11 Has every delegate voted? Do any delegates desire
12 to change their vote?

13 The Clerk will record the vote. There being 48
14 votes in the affirmative and 72 in the negative, the motion
15 fails and the amendment is rejected.

16 The Chair is not avised of any other amendments
17 and this concludes the matters on the debate schedule.

18 The Question now arises on the approval. Will the
19 Clerk please ring the quorum bell again?

20 Delegate Johnson.

21 DELEGATE JOHNSON: Mr. Chairman, if the delegates

1 would turn to Section 5.21, "term of office of judge," that
2 is on page 6, Mr. Chairman, largely because of the very
3 moving speech yesterday by Delegate Scanlan with respect
4 to the monumental proportions of this article wherein he
5 referred to it in effect being a kingly article, I am
6 wondering, Mr. Chairman, if it would be in order to move
7 to strike the title of Section 5.21 "Term of Office of
8 Judge", and substitute in lieu thereof, "Length of
9 Reign." (Applause.)

10 THE CHAIRMAN: The question arises on the approval
11 of Committee Recommendation JB-1 as amended. A vote Aye
12 is a vote in favor of the approval of the recommendation
13 as amended. A vote No is a vote against.

14 Cast your votes.

15 Has every delegate voted? Does any delegate desire
16 to change his vote? The Clerk will record the vote.

17 There being 96 votes in the affirmative and 23 in
18 the negative, Commission Recommendation JB-1 is approved
19 with amendments.

20 The Chair thinks at this time to call attention
21 to the fact that this committee recommendation has been

1 under consideration for nearly five days continuously, the
2 Chairman of the Committee and the Staff Advisor and
3 Administrative Assistant have been obliged to be on the
4 firing line continuously during that time.

5 The Minority Spokesman has been obliged to be
6 continuously on the firing line during that time for the
7 presentation and consideration of 61 amendments and the
8 answer of numerous inquiries.

9 I do not believe it would be possible for any
10 Convention assembled anywhere to have presented to it in
11 such fine fashion the opposing points of view on an article
12 as important as the article comprising the judicial branch
13 as this Convention has been privileged to hear.

14 I think the combined efforts of the committee
15 Chairman and of the Minority, particularly the Minority
16 Spokesman in working together to present reports that
17 point up the issues as sharply and clearly as they have
18 been pointed up to enable this Convention to record its
19 opinion so decisively should be commended and I suggest to
20 you that it can only be properly done by a rising vote of
21 thanks at this time. (The Committee of the Whole arose and

1 applauded.)

2 THE CHAIRMAN: . I can add one personal word to that
3 and I can assure you from personal experience I know that
4 being on the firing line is a strain.

5 The Chair recognizes Delegate Kathleen Robie,

6 DELEGATE K. ROBIE: Mr. Chairman and fellow dele-
7 gates, as one of the non-Bar members of this Association,
8 I would like to express my thanks and appreciation to the
9 Chairman, Mudd, and also to Delegate Johnson and the other
10 lawyers who have lead us through this legal maze.

11 I confess at the time I felt a little sympathy
12 for the words of Carl Sandburg that I ran across the other
13 day in "a Book of Days." The poem was entitled "Lawyers
14 know too much" and in there Carl Sandburg said: "Why is
15 there always a secret singing when a lawyer cashes in? Why
16 does a hearse snicker hauling a lawyer away?"

17 But I rise not to bury the barristers but to praise
18 them. We thank them all for our legal education and we
19 feel that this has been a very fine job.

20 THE CHAIRMAN: And the Chair on behalf of all the
21 lawyer delegates thanks Kathleen Robie as a lay member

1 of the Convention. (Applause.)

2 THE CHAIRMAN: The next item on the agenda is
3 consideration of Committee Recommendation GP-4. Let me
4 inform the Convention that on your behalf, I have made
5 a representation which I am sure you will carry out.

6 We do not wish to carry this recommendation over.
7 At the same time I think it is entitled to the full con-
8 sideration of this Committee of the Whole.

9 Delegate Boyer was obliged to leave a few minutes
10 ago, and, unfortunately, the Vice-Chairman of the Committee,
11 Delegate Wheatley, has been taken ill. Delegate Key, a
12 member of that Committee, will present the report, but in
13 accordance with the plan previously worked out when
14 Delegate Boyer intended to present it, the principal
15 presentation will be by Delegate Bard upon whose proposal
16 this recommendation is largely based.

17 The Chair has assured Delegate Bard that the
18 fact that his proposal is coming up at a late hour this
19 afternoon will not deprive him of the earnest consideration
20 of this Assembly. Delegate Key.

21 As previously indicated, we have made special

1 effort to have the legislation on LB-2 distributed to you
2 before you left. It is now distributed by the pages. This
3 item will be on the agenda early next week. I urge you to
4 take LB-2 with you, it will make fine weekend reading,
5 particularly before and not after the Thanksgiving dinner.

6 Delegate Key.

7 DELEGATE KEY: Mr. Chairman and ladies and gentle-
8 men of the Committee. I hope that you will give us your
9 considered attention, and most benevolent consideration
10 of this most controversial proposal. The general provisions
11 for consideration cover delegate proposal numbers 250 and
12 285, which dealt with consumer protection. The articles
13 as proposed by the Committee will read: "The General
14 Assembly shall by law provide for the protection and edu-
15 cation of the citizens of the state against harmful and
16 unfair business practices."

17 This article was considered by the Committee to
18 be a fundamental duty of the state government to provide
19 for the protection of the public against unethical and
20 deceptive business practices.

21 This duty of the state warrants Constitutional

1 expression to assure that existing protective law in this
2 area will be continued and expanded.

3 Every citizen must be guaranteed a real opportunity
4 to protect himself against the deceptive representations of
5 persons who would take his money without giving reasonably
6 fair returns.

7 After consideration by the committee as to the
8 meaning of the terms in the article, the recommended language
9 was set forth to mean that the General Assembly is given
10 a broad mandate to do those things listed in the article.
11 The word "Education" on line 6 is included to make clear
12 that the state's duty is not discharged solely by restric-
13 ting or punishing unethical dealers after the fact, but must
14 also include substantial efforts to assist the public in
15 recognizing an improper transaction before the fact.

16 The word "unfair" on line 7 is chosen to encom-
17 pass not only the concepts of dishonest, dishonorable, de-
18 ceptive or unethical, but also bargaining advantages aris-
19 ing from special knowledge available to the trade but not
20 to the general public.

21 The word "business" on line 7 also is intended

1 to encompass any exchange of goods or services for compen-
2 sation or any inducement to enter into such an exchange.

3 The word "practices" on line 81 is intended to
4 include at least sales, marketing, advertising and
5 financing.

6 As you can see the article itself is very short and
7 quite self-explanatory.

8 THE CHAIRMAN: Delegate Key, do you want to have
9 Delegate Bard continue at this point?

10 DELEGATE KEY: Yes.

11 THE CHAIRMAN: Delegate Bard.

12 DELEGATE BARD: Mr. Chairman, ladies and gentle-
13 men. I find it very difficult to find any parallel to the
14 position in which I find myself other than possibly to speak
15 after the Gettysburg Address.

16 We have just completed, to my way of thinking, a
17 momentous decision and for me to appear at this time on an
18 issue that is highly critical and to have the Chairman
19 of the Committee which is recommending this issue not pre-
20 sent for various reasons and the Vice-Chairman, I am glad
21 he is here, down with the flu, and I hope the bug doesn't

1 get him before we finish with the vote.

2 Moreover, if I had my way I think we should discuss
3 it Monday morning. I think it is a highly critical issue.
4 I am concerned with giving full attention to it. I think
5 it marks an issue that in a sense is a turning point for us
6 and therefore at this late hour before a holiday, it will
7 necessitate a kind of self-discipline on the part of each
8 delegate to give this the same importance that was given
9 to the issue of judicial decision.

10 I first want to pay tribute to the Committee
11 on General Provisions. This is a truism. This Committee
12 listened to the proposal with some skepticism and as the
13 members heard more and listened to responses, they recog-
14 nized the validity of the arguments first one, and then more
15 and then the majority, then practically all members, with
16 some desiring even a stronger statement.

17 I want to thank especially Mr. Boyer and Mr.
18 Wheatley who worked for understanding and ultimately a
19 strong recommendation on the part of the Committee. It
20 came slowly. It came as a result of a number of days, it
21 came to committee members who were not tired. It came to

1 committee members who could give it full attention. I
2 hope that we would have your full attention on this.

3 For nearly a week we have talked about the
4 structure of state courts and we have sought to reform our
5 court system. I, like most of you, felt that the courts
6 needed improvement. The focus of all of our discussion
7 was to secure better justice.

8 I want to talk about justice too, the kind which
9 goes along with freedom from unjust treatment. It is
10 freedoms from the hazards of today's risks and the goods
11 we use and consume.

12 As President Johnson said, "The problem of dan-
13 gerous products and the hazards to life and limb are of
14 great moment." We live surrounded by a great many hazards
15 we know nothing about; the food we eat, the medication we
16 take and the cars we use would make life terribly awesome
17 if we were to contemplate the unnecessary risks we run.

18 I would like to read a statement by James Macnees
19 in Wednesday morning's Baltimore Sun, November 15, 1967.

20 "Senator Mondale(D., Minn.) said today that chemical analysis
21 of meat purchases made by the Department of Agriculture in

1 Maryland last July 1, disclosed ten separate instances in
2 which the products would have failed to meet Federal
3 standards.

4 "Had the plants involved been subject to Federal
5 inspection, the products could not have been sold to the
6 public, the Senator said.

7 "The Minnesotan charged that because of the "cos-
8 metics" available to the meat-packing industry, the consumer
9 can no longer depend on his eyes or his sense of smell to
10 tell him whether the meat he purchases is wholesome.

11 "In three of the Maryland purchases, chemists found
12 that ascorbate had been added to the meat, he told the
13 Senate subcommittee on Agricultural Research which is con-
14 sidering updating the 61-year-old Federal meat inspection
15 law."

16 In Congress today there is full recognition that
17 today consumer protection is vital. In the Senate, Demo-
18 crats like Proxmire of Wisconsin, Muskie of Maine, and
19 Republicans like Tower of Texas, Brook of Massachusetts,
20 Percy of Illinois have taken strong positions for con-
21 sumer protection.

1 We have gone a long way since the concept of
2 caveat emptor was conceived. In the 19th Century this
3 principal of let the buyer beware was enunciated at a time
4 when there were no synthetics, when there were no power-
5 ful drugs -and I stop here to say that one of my early
6 interests in this was because Mrs. Bard went into the
7 hospital on drug poisoning. If any of you have met with
8 this kind of a case in your own family, you know what
9 occurred, Within a week after she went in or a few
10 weeks after that, the drug was taken off the market.

11 This is just one illustration of where the
12 hazards are sustained side by side with the hopes of civili-
13 zation-- and when man's machines did not hold the promise
14 of miracles and on the other hand the danger of damage to life
15 and limb.

16 My own son this week received a notice from an
17 important automobile association saying he should take his
18 automobile in,--It is a 1967 car,--as thousands of others
19 have been informed, because the steering on it is so terri-
20 bly dangerous that there can be accidents to him.

21 Today it is impossible for the buyer to beware.

1 No one knows how much quackery costs the U. S. In recent
2 hearings conducted by the Subcommittee on Frauds and
3 Misrepresentations affecting the elderly, a unit of the
4 United States Senate's Special Committee on Aging, testi-
5 mony indicated the costs ran into hundreds of millions each
6 year.

7 The sad part of these dealers in quackery is
8 that this affects the poor, the sick and the elderly
9 beyond the loss of money, for they bring suffering, disap-
10 pointment and despair, and hold out false hopes in terms
11 of significant ailments such as arthritis.

12 Senator Harrison A. Williams, Jr., recently
13 said "Do we really know how many Americans are quietly
14 using therapy or products that can give them neither cure
15 nor the hope of cure?"

16 We live in an age of chemistry, and products so
17 manufactured bring forth numerous hazards. For example,
18 an investigation by the Fair Trade Commission in April,
19 1966, pointed out that certain sweaters manufactured in
20 New York were highly flammable. Television and radio pro-
21 grams broadcast the dangers and in a demonstration one

1 sweater was completely consumed by fire in 43 seconds.
2 That same month the FTC found in New York City dangerously
3 flammable imported rayon and metallic cloth intended for
4 use in ladies' skirts, blouses and dresses. These are but
5 few illustrations of chemistry that affects our living.
6 To these can be added the effects of sprays such as DDT
7 on our food. To this can be added the requirement to pro-
8 tect us from impure and dangerous drugs.

9 One need but note how often some drugs have been
10 withdrawn from the market to recognize the safeguards that
11 are necessary. We live in an age of complex and scientific
12 goods, too difficult for analysis by the average consumer.
13 The color TV, the modern automobile, the combined washer
14 and dryer are just too technical for common man to under-
15 stand.

16 Now, for the last point, the latter third of the
17 20th century is a period when economic requirements must
18 be made secure. And this is what I meant when I said this
19 is a turning point in our convention.

20 18th and 19th century man needed political
21 security, and so freedoms to vote, hold office, and to

1 speak one's mind were concerns of our earlier Maryland
2 Constitutions. The fathers of the Constitution of 1776,
3 1851, 1864 and 1867 recognized that if man were to be free
4 he had to have these political securities.

5 These conventions when they argued out the sig-
6 nificance of placing these securities in the Constitution,
7 there were some who said they do not belong in the Consti-
8 tution.

9 But our times and those ahead of us require us to
10 establish economic securities. If man cannot be free
11 economically from want, of what avail is the ballot? Fore-
12 most among these economic freedoms is the guarantee that
13 the product of our labor will purchase that which is
14 wholesome and safe.

15 Finally, why the Constitution?

16 The American Constitution has long been an
17 expression of our belief, indeed our dream. As I said the
18 other day, when talking about natural resources within our
19 Constitution, there has existed what seemed to be hortatory
20 statements for some time and yet out of the 1851 Consti-
21 tutional mandate, "that the legislature ought to encourage

1 the diffusion of knowledge"came the development of our state
2 school laws, and system. Out of the Constitutional mandate
3 that sanguinary laws ought to be avoided has grown a good
4 deal of our penal code.

5 Some said this won't mean a thing to put it in the
6 Constitution at the time it was debated. We have not
7 been overly concerned about including long passages that
8 assure the security of justice -- 10 pages, -- here we
9 are talking about one sentence, not ten pages. I am
10 against class or special Constitutional provisions for
11 lumbermen, oystermen, coal miners or even school teachers,
12 and there are some state Constitutions that have some
13 special provisions for them.

14 I do not believe they belong in the Constitution,
15 but the consumer involves all the people. This action would
16 tell the aged, the poor, the indigent, indeed all the
17 people that we care.

18 The other day when we included the Section on
19 Natural Resources, there were some who said this is not
20 Constitutional. It is hortature. But over 100 of us felt
21 that the natural resources were important because they

1 belonged to the people. They were important enough
2 because of the dangers to the land.

3 Now, the proponents and the Committee ask that
4 the Convention do for the people's human resources what it
5 did for the natural resources. In other words, that which
6 belongs to the people is that which is God given, as much
7 as natural resources are given to us via the state.

8 It is late in the afternoon and before a holiday,
9 and I would urge you to support the consumer protection
10 educational proposal so that many can give thanks this
11 Thanksgiving as we who are here can give thanks for what
12 we have done.

13 Thank you.

14 THE CHAIRMAN: Are there any questions?

15 Delegate Case.

16 DELEGATE CASE: Delegate Bard, does this
17 requirement of this provision, this proposal, require state
18 action? Will it require state action or is it merely --

19 DELEGATE BARD: I would like to read in answer
20 to that question the short statement in the proposed New
21 York Constitution. Before reading it, I would like to

1 indicate that the debates that took place on the very
2 question which is being asked by Delegate Case in New
3 York, brought forth an affirmative answer and in all the
4 dialogue in regard to the New York Constitution, there
5 was little that was not affirmative in terms of this state-
6 ment.

7 It read like this: "The protection and the educa-
8 tion of the people of the state against unfair, inequitable
9 or dishonest sales, marketing and financing practices are
10 and shall continue to be state concerns."

11 Another sentence, "The legislature shall provide
12 for the implementation of this section."

13 True, the first portion of this was laudatory,
14 but the latter part of this did bring to the legislature
15 a direct mandate for action in answer to your question,
16 and the New York State Convention that went through this
17 dialogue answered to the fact that it belonged to the
18 Constitution and secondly, that it could be enforced.

19 THE CHAIRMAN: Delegate Case.

20 DELEGATE CASE: What Constitution was that that
21 you were talking about?

1 THE CHAIRMAN: Delegate Bard.

2 DELEGATE BARD: I am referring to the New York
3 proposed Constitution: in all the debates with respect to
4 the provisions of the New York State Constitution, this
5 one particular section was commended on many occasions by
6 the newspapers and it was said it was just too bad that
7 such good proposals as this and other proposals within the
8 Constitution could not go through.

9 THE CHAIRMAN: Delegate Case.

10 DELEGATE CASE: That is, the Constitution was
11 defeated?

12 DELEGATE BARD: It was and it is going to be
13 brought forth singly to the public.

14 THE CHAIRMAN: Delegate Case.

15 DELEGATE CASE: To get back to my question,
16 because I have something I want to have you follow through
17 with me, I take it then that you are telling us that this
18 will require state action. This is a positive requirement
19 of state action, is this correct?

20 THE CHAIRMAN: Delegate Key.

21 DELEGATE KEY: I would rather answer your

1 question, because I was on the committee and as such I
2 think I can let you know a little bit more about our
3 thinking.

4 Yes, we feel this is a mandate of the General
5 Assembly to act.

6 THE CHAIRMAN: Delegate Case.

7 DELEGATE CASE: I have to ask Delegate Bard to
8 speak because he made the principal address. I hope you
9 don't mind.

10 DELEGATE KEY: No.

11 DELEGATE CASE: He mentioned the fact that one
12 of the examples was the fact that someone in his family
13 had drug poisoning and the passage of this act and the
14 implementing legislation might alleviate that situation
15 in the future.

16 Did you or Delegate Bard intend for the General
17 Assembly to set up a state Food and Drug Association?

18 THE CHAIRMAN: Delegate Key.

19 DELEGATE KEY: No, I don't necessarily mean
20 that, because that is already handled somewhat by the
21 Federal government, but I would expect them to implement

1 laws to take care of those situations that are not covered
2 by the interstate provisions of the Federal government.

3 For example, intrastate meat.

4 THE CHAIRMAN: Delegate Case.

5 DELEGATE CASE: Aren't all drugs covered by
6 the Food and Drug Administration and don't they all have
7 to be approved before they can be put on the market?

8 THE CHAIRMAN: Delegate Bard.

9 DELEGATE BARD: Delegate Case, my illustrations
10 dealt first with the significance of consumer protection
11 in all areas of life.

12 Toward the end of my presentation, I answered
13 the question in respect to why Constitutional authoriza-
14 tion. There are some areas in respect to the dispensing
15 of drugs that do get into state law, not necessarily in
16 terms of the particular illustration that I gave, but you
17 might be interested in knowing that this very day in
18 Congress, there is discussion with respect to the use of
19 the generic description of drugs which has direct impact
20 on the consumer.

21 Now, I don't think that the particular illustration

1 is as important as the overriding requirements for
2 consumer protection.

3 THE CHAIRMAN: Delegate Case.

4 DELEGATE CASE: Well, Delegate Bard, you made
5 the very point. The matter is being currently discussed
6 in Congress?

7 But let us go to the second of the two examples
8 you gave, and that is the example of sweaters and the chemis-
9 try that was involved in those. Do you propose to set
10 up a state Federal Trade Commission to take care of this
11 kind of problem?

12 THE CHAIRMAN: Delegate Bard.

13 DELEGATE BARD: The consumer protection agency
14 that is now in existence, Delegate Case, and you may be
15 familiar with it, is one that has been placed in existence
16 in a Federal relationship, it can go out of existence
17 tomorrow, as you all know.

18 We have heard testimony on the part of those
19 associated with them and I hold no brief for that
20 agency. Indeed, my own feeling would be that there would
21 be an entirely different kind of relationship in respect

1 to consumer protection.

2 But the point is as follows: The Committee heard
3 testimony and I would rather that they testified on this
4 fact that within the few weeks that this agency has been
5 in existence, it has already found an overburdened schedule
6 with regard to complaints within the area in which the
7 state alone has jurisdiction vis-a-vis the consumer re-
8 sponsibility.

9 THE CHAIRMAN: Delegate Case, do you have
10 a further question?

11 DELEGATE CASE: A few more.

12 Delegate Bard, I am trying to reach the rationality
13 of your argument. Do you think the Food and Drug Adminis-
14 tration or the Federal Trade may go out of business and
15 we would need something of this nature?

16 THE CHAIRMAN: Delegate Key.

17 DELEGATE KEY : I think the slant on this has
18 been turned maybe in the wrong direction, Delegate Case,
19 by the direction of your question. We are not that much
20 concerned about the interstate commission going out of
21 business, rather we are concerned with two things, first

1 of all that for the years that we have had our Constitution
2 and, of course, that was aluded to previously, the
3 business element and the producer has been somewhat
4 favored and we have had a philosophy of Let the Buyer
5 Beware!

6 Our contention here is that if we include in
7 our Constitution a section worded as this is here, that
8 it will do something other than provide law. It will
9 change the attitude of business persons to inform the buyer
10 rather than try to hide things from him, to be fair with
11 the buyer, rather than try to trick him into deals.

12 This is the first area.

13 The second is that there are areas which are
14 not covered by interstate commerce as we are well aware.
15 I think one of our congressmen earlier said in the debates
16 with the Congress on the meat inspection laws that 74
17 percent of all the meat slaughtered in Maryland does not
18 come under interstate commerce, which means that we
19 are eating in Maryland food that is not necessarily healthy
20 and harmless, so that we are saying that we need a state
21 law to take up the slack that is left by the Federal

1 Constitution and Federal law, rather than to supplant
2 them.

3 THE CHAIRMAN: Delegate Case.

4 DELEGATE CASE: Delegate Key, I couldn't agree
5 with you more, but isn't the legislature right now or the
6 legislative council right now facing up to this situation
7 and hasn't it adopted a very comprehensive meat inspection
8 law which was recommended by the University of Maryland?

9 THE CHAIRMAN: Delegate Key.

10 DELEGATE KEY: You are very much correct, Delegate
11 Case, and I have had an opportunity to look at the proposed
12 consumer bill that was proposed this year in the General
13 Assembly and adopted and really as I looked at the three
14 or four pages that were proposed, I could not really read
15 it readily because most of it was stricken out.

16 I think if the Constitution provides some base
17 from which the legislature can act, then they will act
18 with courage and do for the state what they feel needs to
19 be done. They will work it cautiously and do what is
20 least expected of them, rather than what is adequate for
21 the job.

1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: There are two other areas. Is
3 it your proposal to set up a fair labor standards act or
4 state fair practices act?

5 THE CHAIRMAN: Delegate Key.

6 DELEGATE KEY: I really could not say what this
7 might entail, because, as you say, we do have a legislative
8 council that looks at these things and decides.

9 As you can see, we did leave this for the
10 legislators to do, hoping they would do a very good job.

11 THE CHAIRMAN: Delegate Case.

12 DELEGATE CASE: Does your proposal also cover the
13 intrastate, and I underscore that, intrastate sales of
14 securities, stocks, bonds, and that kind of thing?

15 THE CHAIRMAN: Delegate Key.

16 DELEGATE KEY: Delegate Case, our proposal covers
17 anything and everything the legislature decides it has
18 to go into.

19 THE CHAIRMAN: Delegate Case.

20 DELEGATE CASE: Isn't that particular service
21 being performed by the State Attorney General's office?

1 THE CHAIRMAN: Delegate Key.

2 DELEGATE KEY: That service is being performed,
3 but there are services not available for the consumer in
4 the state of Maryland.

5 THE CHAIRMAN: Delegate Pullen.

6 DELEGATE PULLEN: I would like to ask Delegate
7 Key a couple of questions.

8 THE CHAIRMAN: Delegate Key?

9 DELEGATE KEY: Yes, sir.

10 THE CHAIRMAN: Delegate Pullen.

11 DELEGATE PULLEN: What is the difference between
12 protecting people from bad meat and bad savings and loan
13 associations and further if the constitution had a pro-
14 vision providing protection of savings and loan associa-
15 tions, would we have protected ourselves from having gotten
16 into the mess we got ourselves into a year or two ago?

17 THE CHAIRMAN: Delegate Key.

18 DELEGATE KEY: I am not saying we would not have
19 but I am sure with the kind of foresighted legislature we
20 have had in the past, this would not have happened if
21 we had had a Constitutional amendment like this.

1 THE CHAIRMAN: Delegate Pullen, do you have
2 another question?

3 DELEGATE PULLEN: Yes.

4 THE CHAIRMAN: Proceed.

5 DELEGATE PULLEN: I still haven't had my answer
6 about the savings and loan associations. It seems to me
7 we have some legislation to protect the consumer against
8 bad meat. What is the difference between protecting people
9 by law or Constitution against bad meat and bad savings
10 and loan associations?

11 THE CHAIRMAN: I take it Delegate Key answered to
12 the best of her ability.

13 I see no difference, Delegate Pullen. Maybe
14 Delegate Key can answer later.

15 Delegate Pascal.

16 DELEGATE PASCAL: Delegate Key, I am referring
17 to the committee amendment, line 28 and below, are you or
18 was it the committee's intent to include professions in this
19 particular category -- lawyers or doctors?

20 THE CHAIRMAN: Delegate Key.

21 DELEGATE KEY: Anyone who is in the business of

1 providing services for compensation is included, and I
2 think lawyers and doctors do receive compensation for their
3 services.

4 THE CHAIRMAN: Delegate Armor.

5 DELEGATE ARMOR: May I ask several very short
6 questions?

7 THE CHAIRMAN: Proceed.

8 DELEGATE ARMOR: Does any other state have this
9 in their Constitution?

10 THE CHAIRMAN: Delegate Key.

11 DELEGATE KEY: I don't know, Delegate Armor, whether
12 there are any others with this provision in the Constitu-
13 tion, but there are very few Constitutions that have been
14 written during the lifetime of this particular problem.

15 I don't know that any do, but maybe Delegate
16 Bard can supply that information.

17 THE CHAIRMAN: Delegate Bard, can you supply it?

18 DELEGATE BARD: In recent years, let me see, 25
19 states in recent years have established agencies. This
20 whole thing has gotten its momentum in the last five years.
21 There has not been a single state within the last five

1 years that has written a Constitution that has not given
2 this consideration -- New York included.

3 THE CHAIRMAN: Delegate Armor.

4 DELEGATE ARMOR: We are having trouble with the
5 microphone.

6 THE CHAIRMAN: Just a second.

7 DELEGATE DUKES: I always have the same trouble
8 with the telephone company he is having with the micro-
9 phone. (Applause.)

10 THE CHAIRMAN: Delegate Armor.

11 DELEGATE ARMOR: Let me answer, please, as a
12 point of personal privilege.

13 DELEGATE DUKES: Don't feel like you have to.

14 DELEGATE ARMOR: If the telephone company had
15 installed these microphones--

16 THE CHAIRMAN: No advertising permitted.

17 DELEGATE ARMOR: My second question is this.
18 Would the legislature in its wisdom set up a statute or
19 series of statutes that would eliminate the Better
20 Business Bureau?

21 THE CHAIRMAN: Delegate Key?

1 DELEGATE KEY: No, this wouldnot take away
2 anything that is done privately. The only thing analogous
3 would be social agencies.

4 THE CHAIRMAN: Delegate Armor.

5 DELEGATE ARMOR: Is it likely in your wisdom
6 that Maryland would end up with a small edition of Betty
7 Furness?

8 THE CHAIRMAN: Delegate Key.

9 DELEGATE KEY: No comment, but not really. I
10 think that the legislature wouldhandle it.

11 THE CHAIRMAN: Delegate Armor.

12 DELEGATE ARMOR: I have one other question of
13 Delegate Bard.

14 You mentioned about your son's car. Was that
15 a voluntary effort on the part of some auto manufacturer
16 to call the car back, or was there agitation to get those
17 cars called back?

18 THE CHAIRMAN: Delegate Key.

19 DELEGATE KEY: I don't want to stop anything here.
20 As you can see from the proposal that was submitted to
21 us and the article that came out of our committee, I

1 think perhaps we might be taking this from a different
2 standpoint.

3 True, we are concerned about everyone in this,
4 the people who do have automobiles which go wrong, people
5 who are duped by securities dealers and the like, but I
6 think there are other considerations here and I don't
7 want this to get bogged down in a lot of extraneous
8 material.

9 THE CHAIRMAN: Delegate Key, perhaps you misunder-
10 stood Delegate Armor's question. The question is whether
11 the illustration by Delegate Bard about the defective auto-
12 mobile being called back, was -- whether it was called
13 back voluntarily by the manufacturer or called back by the
14 manufacturer because of some Constitutional or statutory
15 provision?

16 Delegate Bard.

17 DELEGATE BARD: As I understand it, the auto-
18 mobiles were called back by the automobile manufacturer
19 but under pressure on the part of Congressional visita-
20 tions and discussions in regard to the whole area of auto-
21 mobile safety.

1 THE CHAIRMAN: Delegate Key.

2 DELEGATE KEY: I do not want to pursue the
3 debate of the philosophy, I merely want to say that the
4 concern here is that the State of Maryland has a segment of
5 responsibility that lies outside and supplements or compli-
6 ments that responsibility of the Federal government.

7 THE CHAIRMAN: Delegate Armor.

8 DELEGATE ARMOR: Thank you very much, Delegate
9 Bard, and Delegate Key.

10 DELEGATE KEY: The reason for my saying that is
11 because I realize that there are merchants who are
12 involved in good practices under the Better Business
13 Bureau who are car dealers, who call back, in good faith,
14 automobiles that are defective.

15 I don't think these are the people we are
16 trying to reach in our legislation. I think we are more
17 interested in trying to stop the unscrupulous used-car
18 salesmen who induce poor people, who are offering faulty
19 goods that the person has no real liability for. I think
20 we are talking about the corner storekeeper who comes to
21 the door and sells goods to people under contracts that

1 do not say what the contract really is, and I think these
2 are the people that we are trying to reach, more so than
3 those reputable businessmen, although everyone can become
4 disreputable.

5 THE CHAIRMAN: Delegate Koger.

6 DELEGATE KOGER: I would like to ask this question.
7 For four or five years, I have appeared before the legisla-
8 tive committee trying to do something about the exorbitant
9 interest charges charged motorists in the general ex-
10 ploitors insurance army.

11 With the passage or adoption of this proposal,
12 would it do something about the exorbitant interest
13 charges that are made? For instance, some people are paying
14 as much as \$700 in interest charges. Would that be covered?

15 THE CHAIRMAN: Delegate Key.

16 DELEGATE KEY: As I said, this article would
17 be for any and all legislative acts covering the consumer
18 and certainly whoever that is would be a consumer.

19 THE CHAIRMAN: Delegate Koger.

20 DELEGATE KOGER: Would it do something about
21 that? In some instances we have been able to establish

1 the fact that furniture that is used, that is covered and
2 used over and over again is sold as new.

3 Would this proposal do something about that
4 condition?

5 THE CHAIRMAN: Delegate Key.

6 DELEGATE KEY: These are the kind of things we
7 hope to give the legislature courage to act upon.

8 THE CHAIRMAN: Delegate Koger.

9 DELEGATE KOGER: We have a situation where a
10 man had \$1200 worth of awnings put up, and, as a result,
11 he had a bill for \$11,000 some-odd. In other words, he
12 lost his home. Would conditions of that kind be covered?

13 THE CHAIRMAN: Delegate Key.

14 DELEGATE KEY: The legislature would have the
15 mandate to take care of it.

16 THE CHAIRMAN: Are there any further questions
17 of Delegate Key?

18 Delegate Cardin.

19 DELEGATE CARDIN: Is there anything in this Con-
20 stitutional provision which will enforce these particular
21 areas you want covered that do not exist in the consumer

1 protection forum right now under the Attorney General?

2 THE CHAIRMAN: Delegate Key.

3 DELEGATE KEY: As I said before, the present law
4 is a beginning, but I think if this is constituted, the
5 legislature will look further into those practices which
6 are not fair to consumers and have laws to take care of them
7 first of all.

8 Secondly, it will give some strength and teeth
9 to those agencies that are supposed to be doing their
10 job.

11 THE CHAIRMAN: Delegate Cardin.

12 DELEGATE CARDIN: Would you not feel it is
13 the voice of the public that would give the strength and
14 force to the legislature rather than the written word?
15 They already have the right to do this.

16 THE CHAIRMAN: Delegate Key.

17 DELEGATE KEY: I don't think so, Delegate Cardin.
18 I think we have been living for more than 100 years
19 with protection for the business and merchange and the
20 producer and I think the interest of the consumer is too
21 diversified and too scattered to become an organized voice

1 to speak up against this kind of thing as a unit loud
2 enough to be heard without written mandates.

3 THE CHAIRMAN: Delegate Cardin.

4 DELEGATE CARDIN: Do you intend any further
5 possible transitional legislation to accompany this?

6 DELEGATE KEY: No. The purpose of this article
7 is to say to the legislature: We want you to act.

8 THE CHAIRMAN: Any further questions?

9 Delegate Lloyd Taylor.

10 DELEGATE L. TAYLOR: Delegate Key, in the state
11 of New York when they discussed this particular subject
12 they introduced the Consumer Protection Bill of Rights.

13 Would you say that the attempt by this particular
14 Constitutional poll is to protect the right of the indi-
15 vidual in terms of his money?

16 In other words, when he buys anything on the
17 market, he should have the right of protection from the
18 state in protecting himself from fraud and so forth. You
19 say this is the intention of the committee recommendation?

20 THE CHAIRMAN: Delegate Key.

21 DELEGATE KEY: Well, the intention of the

1 committee is to protect the citizen.

2 Now, whether it is a right or not, as long as
3 it is done, we want it in the Constitution, you know.
4 Whether it belongs in as a right or as a general provision,
5 we need to start.

6 THE CHAIRMAN: Delegate Taylor.

7 DELEGATE L. TAYLOR: Would you say this is a
8 right, the states have a responsibility within their
9 police power to give this protection to the citizen?

10 THE CHAIRMAN: Delegate Key.

11 DELEGATE KEY: Yes.

12 THE CHAIRMAN: Any further questions of the
13 committee?

14 Delegate Beatrice Miller.

15 DELEGATE B. MILLER: Mr. Chairman, I would like
16 to make a point of parliamentary inquiry, if I might.

17 THE CHAIRMAN: State your inquiry.

18 DELEGATE B. MILLER: For four and a half or five
19 days we have sat here and discussed legal justice and the
20 attention of the Convention was givento that subject. To
21 some of us, economic justice happens to be just as

1 important. If the hour is so late and the delegates
2 are so tired that we cannot give proper consideration to
3 this article, we should delay it until Monday morning
4 and consider it afresh.

5 THE CHAIRMAN: The Chair observes there have been
6 as many delegates present during this discussion as there
7 have been during the day. At the time of the presentation,
8 every Delegate was present in his seat. We have to move
9 on and I think we should bring this matter to conclusion
10 one way or another.

11 Delegate Koger.

12 DELEGATE KOGER: I would like to arise to a
13 point of personal privilege.

14 THE CHAIRMAN: State the privilege.

15 DELEGATE KOGER: To me, Mr. Chairman, this is
16 one of the most important subjects to come before this
17 Convention. Now, I came here, I listened and tried to
18 give all I could to the judiciary aspects of the Conven-
19 tion.

20 Now this deals with the people, the little
21 people that I am trying to represent, and I think you should

1 give this thing -- first of all I think we are staging it
2 incorrectly.

3 Ordinarily I have to agree with you in every
4 step, but I don't agree with you right now. First
5 of all, you have a lame committee. You don't have the
6 committee chaired properly--

7 THE CHAIRMAN: Delegate Koger, I think the
8 presentation by Delegate Key has been just as forceful
9 and complete as it could possibly have been by anyone
10 else on the committee.

11 DELEGATE KOGER: I did not mean it that way. I
12 think they have done most ably. But what I am trying
13 to say is that this should come up at a better time and
14 not just before Thanksgiving day, and most of us want
15 to get to our homes. We don't have the proper setting
16 for something as important as the rights of the consumer,
17 the protection of the people against harmful business
18 practices. That is most important to me.

19 THE CHAIRMAN: The Chair believes the matter
20 could be disposed of this afternoon just as well as it
21 could be Monday morning, but in view of the fact that

1 there are delegates that feel very strongly that a con-
2 tinuation of the consideration of this matter this after-
3 noon would not be just to them, the Chair would recognize
4 Delegate Powers to move that the committee rise, and we
5 will move ahead with this at the next sitting.

6 The Chair recognizes Delegate Powers, Chairman
7 of the Committee on Calendar and Agenda.

8 DELEGATE POWERS: I move that the Committee
9 of the Whole rise, report to the Convention as to its
10 action with respect to Committee Recommendation JB-1 as
11 amended, and further report that it has not concluded its
12 consideration of Committee Recommendation GP-4.

13 THE CHAIRMAN: It has been seconded.

14 All in favor signify by saying Aye, contrary No.

15 The Ayes have it. It is so ordered.

16 (The mace was replaced by the Sergeant at Arms.)

17 (Whereupon, at 5:40 p.m., the Committee of the
18 Whole rose, and the Convention reconvened.)

19 THE PRESIDENT: The Convention will now come
20 to order.

21 Will the Clerk please ring the quorum bell?

1 On behalf of the Committee of the Whole, the
2 Chair reports the Committee of the Whole has concluded
3 its consideration of Committee Recommendation JB-1, that
4 it reports Committee Recommendation JB-1 as approved
5 with amendments. The Committee reports JB-1 is referred
6 to the Committee on Style, Drafting and Arrangement.

7 The Chair further reports on behalf of the
8 Committee of the Whole that it has under consideration
9 Committee Recommendation GP-4; that it still has it under
10 consideration and it desires leave to sit for further
11 consideration.

12 The Chair has a few announcements to make. Since
13 this morning I have been able to talk by telephone to Dele-
14 gate Cleveland, and I am sorry to report to you that he
15 is in considerable pain with trouble in his back irritated
16 by persistent cough, but I am happy to say that aside from
17 the pain, the situation is apparently not serious.

18 He hopes and the doctors hope as soon as the
19 cough subsides and the inflammation in the back subsides,
20 he will be able to return and he hopes this will be early
21 next week.

1 I also wish to announce to the Convention that
2 the Chair is much more tolerant of the Convention employees
3 than it is of the Convention delegates, and it has
4 granted them a holiday tomorrow and Friday without having
5 assigned any homework.

6 The Chair also wants to announce that this is
7 the last day for seven of the pages, I mean the last
8 day of their second tour of duty. I understand they are sad
9 because they will not be able to return, but I would like
10 the Convention to indicate its happiness and its gratitude
11 to them for two, two-week periods of exceptionally fine
12 service. (Applause.)

13 One personal note on behalf of the Chair: my
14 sincere thanks for a very, very hard-working Convention,
15 and my best wishes to you for a very happy few days'
16 holiday.

17 Are there any announcements by Committee Chair-
18 men?

19 Delegate Mudd?

20 DELEGATE MUDD: I hate, Mr. President, to
21 interrupt the spirit of your remarks to announce to my

1 committee that we must necessarily meet at 12:00 on
2 Monday. Your homework is to consider Transitory Provi-
3 sions.

4 THE PRESIDENT: Delegate Morgan.

5 DELEGATE MORGAN: Mr. President, the Committee
6 on the Executive Branch will meet at 12 noon on Monday
7 to consider some proposed amendments to the Executive
8 Committee Article.

9 THE PRESIDENT: Delegate Dulany.

10 DELEGATE DULANY: The Committee on Public Infor-
11 mation will meet promptly at 11:30 Monday morning.

12 THE PRESIDENT: Delegate Penniman.

13 DELEGATE PENNIMAN: The Committee on Style will
14 meet at 12:00 on Monday.

15 THE PRESIDENT: Any other announcements by
16 committee chairmen?

17 Any other announcements by other delegates?

18 If not, the Chair recognizes Delegate Powers,
19 Chairman of the Committee on Calendar and Agenda.

20 DELEGATE POWERS: I move that we adjourn until
21 Monday, November 27, at 2:00 p.m.

1 (The motion was seconded.)

2 THE PRESIDENT: Before you adjourn, any delegates
3 who were not present at roll call this afternoon indicate
4 your presence for roll call now.

5 All those in favor signify by saying Aye; contrary,
6 No. The Ayes have it. It is so ordered.

7 (Whereupon at 5:45 p.m., the Convention was
8 adjourned, to reconvene at 2:00 p.m. on Monday, November
9 27, 1967.)

10

11

12

13

14

15

16

17

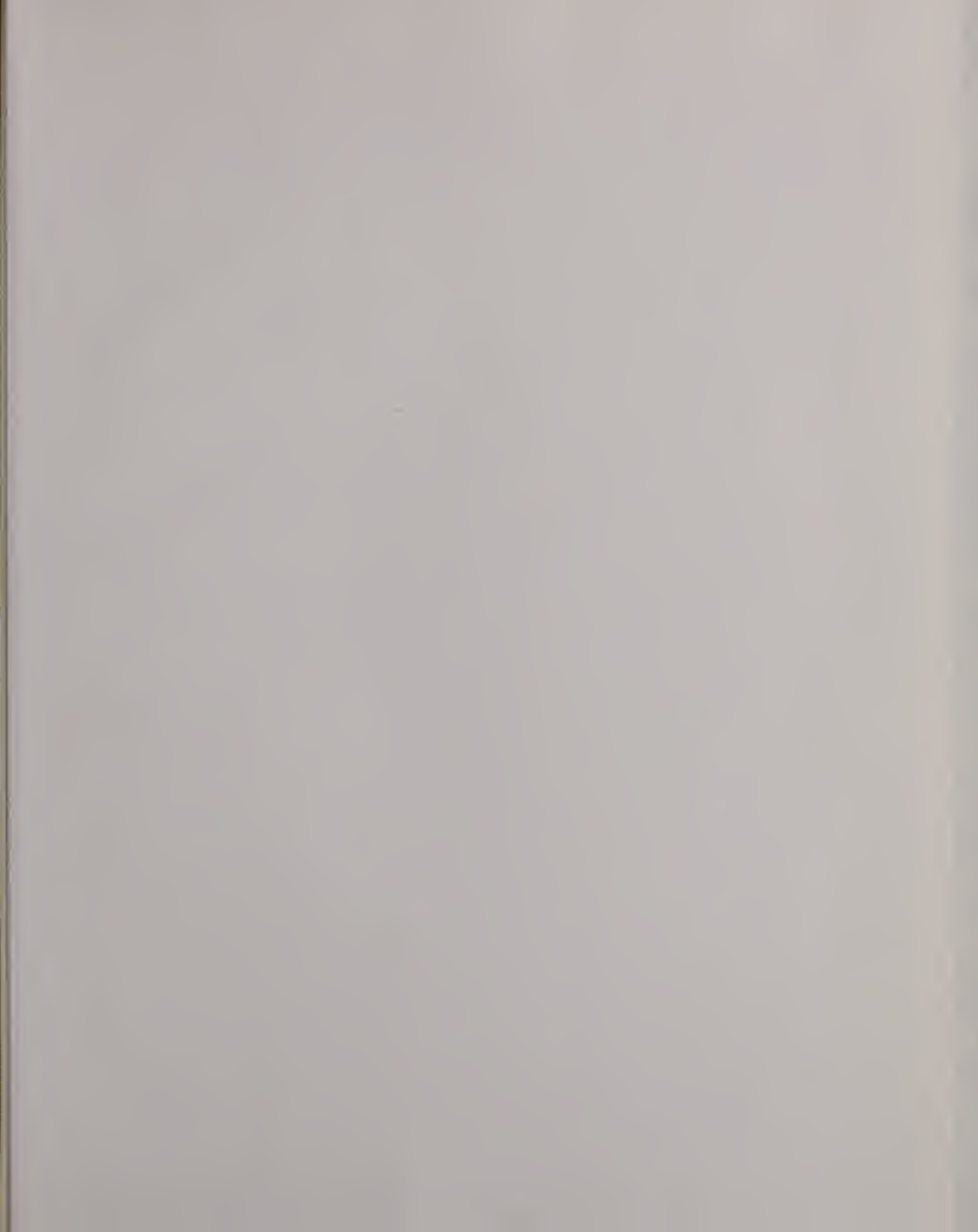
18

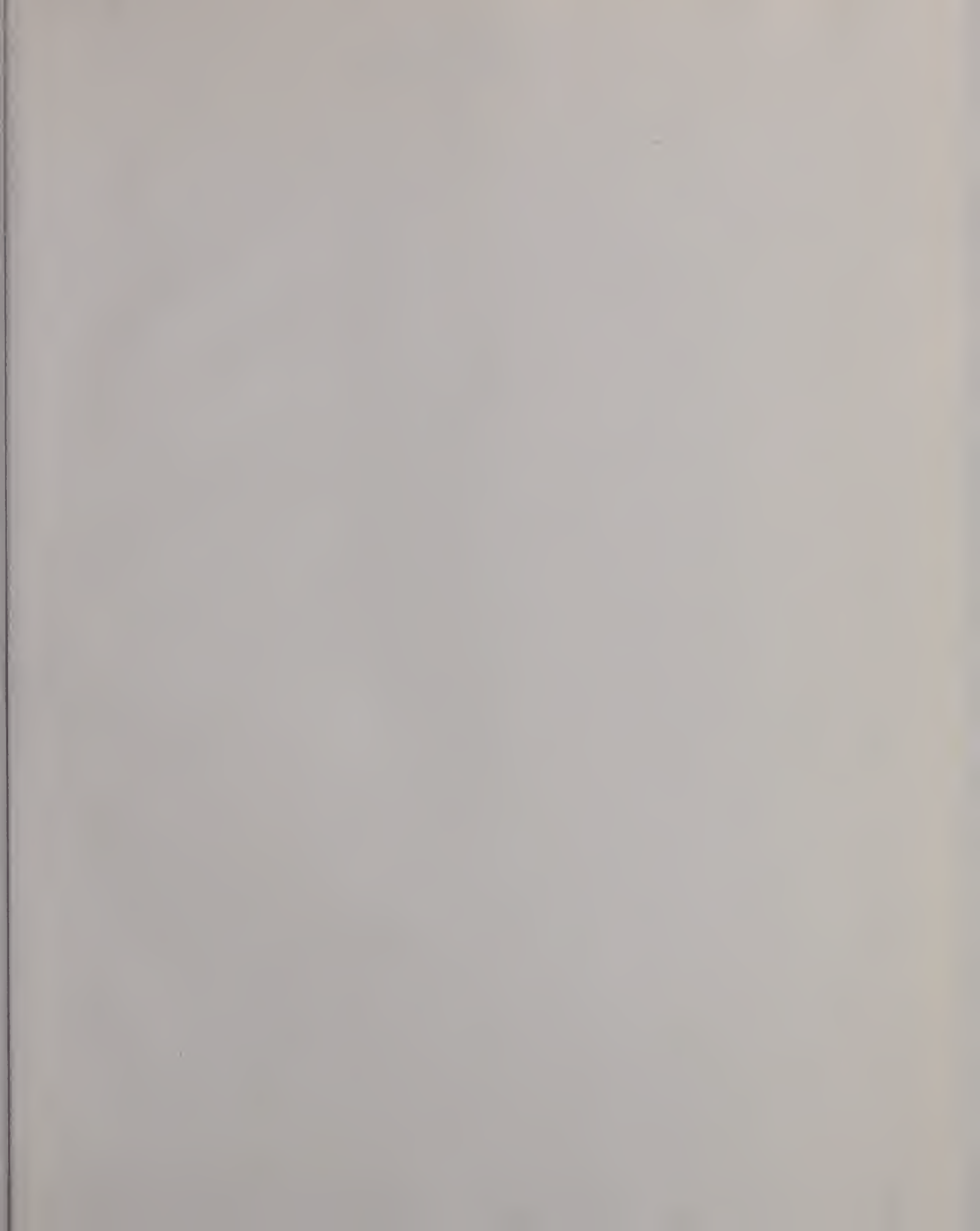
19

20

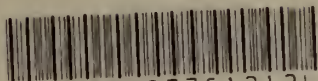
21

Maryland Room
University of Maryland Library
College Park, Md.





3 1430 02776131 3



a31430027761313b

UNIV. OF MD. COLLEGE PARK

